



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
 ---) ADP Case No. 15-01103
)
 Applicant for Public Trust Position)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

08/11/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant has mitigated the trustworthiness concerns regarding financial considerations. Eligibility to occupy a public trust position is granted.

Statement of the Case

On September 5, 2012, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On August 5, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, pursuant to DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended and modified (Regulation); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the DOD on September 1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged trustworthiness concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to make

¹ GE 1 (e-QIP, dated September 5, 2012).

an affirmative finding under the Directive that it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for occupying a public trust position to support a contract with the DOD. The SOR recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on August 18, 2015. In a sworn statement, dated September 1, 2015, Applicant responded to the SOR allegations and failed to indicate if she wanted a hearing before an administrative judge, stating she "will not be able to attend the hearing." Department Counsel sought clarification regarding that comment. On January 27, 2016, Applicant requested a hearing before an administrative judge. On December 10, 2015, Department Counsel had previously indicated the Government was prepared to proceed. The case was assigned to me on January 7, 2016. A Notice of Hearing was issued on January 20, 2016. I convened the hearing, as scheduled, on February 2, 2016.

During the hearing, 5 Government exhibits (GE 1 through GE 5) and 20 Applicant exhibits (AE A-1 through A-6, B, C-1 through C-3, D-1 through D-3, E-1 through E-4, and F-1 through F-3) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on February 10, 2016. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. She timely submitted a number of additional documents, which were marked as AE G through AE N, and admitted into evidence without objection. The record closed on February 22, 2016.

Findings of Fact

In her Answer to the SOR, Applicant admitted five of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.e.) of the SOR. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 34-year-old employee of a defense contractor. She has been a full-time claims processor for a defense contractor since May 2004.² She is seeking to retain her eligibility for occupying a public trust position to support a contract with the DOD. She has never served in the U.S. military.³ She is a 2000 high school graduate with two years of college credits, but no degree.⁴ Applicant was married in April 2010.⁵

² GE 1, *supra* note 1, at 11.

³ GE 1, *supra* note 1, at 16.

⁴ GE 1, *supra* note 1, at 10-11.

⁵ GE 1, *supra* note 1, at 18.

She has a son, born in 2003 from a prior relationship, as well as two daughters, born in 2011 and 2014, and a stepdaughter, born in 2007.⁶

Financial Considerations⁷

There was nothing unusual about Applicant's finances until sometime mid-2003 when she went into "preterm labor." She was forced to drop out of school for complete bed rest, and she moved back in with her mother. In dropping out of school, Applicant lost her part-time college work-study position. After her son was born, Applicant was able to obtain some temporary positions, and she consolidated her student loans and started reimbursing her mother for various expenses including daycare, car insurance, and car payments.⁸ The child's father was also a student, and with his income from the military reserve, he helped out financially when he could.⁹

In 2010, when she got married, Applicant spent an estimated \$5,000 (some was borrowed money and the remainder was cash) on the wedding.¹⁰ At about the same time, Applicant's husband's truck caught fire and he was unable to work until it was repaired.¹¹

During the period July 2011 to September 2011, Applicant went into "preterm labor" with her second child and was unable to work.¹² Applicant's third child was born with serious health issues.¹³ In addition to that child's health issues, Applicant's son was hurt on two occasions at school when he broke a collar bone and later a wrist. Her oldest daughter sustained injuries while in daycare. Transporting them to their respective medical appointments caused Applicant to lose substantial time from work. Applicant also underwent surgery for a condition that kept her from working for six weeks in 2012. As a result of continuing issues associated with her condition, as of September 2015, Applicant has been permitted to work from home.¹⁴

⁶ GE 1, *supra* note 1, at 20-22; Tr. at 66.

⁷ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1, *supra* note 1; GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated September 25, 2012); GE 3 (Equifax Credit Report, dated January 10, 2015); GE 5 (Equifax Credit Report, dated September 24, 2015); GE 2 (Personal Subject Interview, dated October 15, 2012); Answer to the SOR, dated September 1, 2015). More recent information can be found in the exhibits furnished and individually identified.

⁸ Tr. at 39-40, 48-49; GE 1, *supra* note 1, at 14-15.

⁹ Tr. at 40.

¹⁰ Tr. at 60.

¹¹ Tr. at 41.

¹² Tr. at 41.

¹³ Tr. at 42.

¹⁴ Tr. at 45.

Because of what she described as a “rollercoaster” with her children’s issues and missing time at work, Applicant had insufficient funds to keep up with all of her monthly payments. A small number of accounts, including two of which she was unaware, became delinquent, and they were placed for collection or charged off. Her student loans went into default. After learning the extent of her financial issues while being interviewed by an investigator from the U.S. Office of Personnel Management (OPM), Applicant contacted her creditors. In August 2015, she sought the assistance of a financial coach to establish a debt payoff plan and a budget.¹⁵ She now has a budget plan that includes her initial “snowball” repayment plans for her small accounts and her subsequent repayment plans for her larger accounts.¹⁶

The SOR identified seven purportedly continuing delinquent accounts, totaling approximately \$23,133, as reflected by the September 2012 credit report,¹⁷ the January 2015 credit report,¹⁸ and the September 2015 credit report.¹⁹ Those debts and their respective current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant’s comments regarding same, are described below:

SOR ¶¶ 1.a. and 1.b: These are two student loans that were issued by Sallie Mae and transferred to a servicing agent, before they went into default. They were returned with claims for reimbursement to Sallie Mae. The amounts of both loans were unclear because they appear in the credit reports with different balances, depending on the listed creditor and the listed reporting agency. The January 2015 credit report lists the loan attributed to SOR ¶ 1.a. as having a high credit of \$10,770 and a past-due amount of \$14,246,²⁰ while the September 2015 credit report lists the account with a high credit of \$10,770 and a past-due balance of \$11,646.²¹ The January 2015 credit report lists the loan attributed to SOR ¶ 1.b. as having a high credit of \$6,141 and a past-due amount of \$8,123,²² while the September 2015 credit report lists the account with a high credit of \$6,141 and a past-due balance of \$6,640.²³ Applicant contacted the most recent listed creditor and set up a repayment plan, and commencing on September 2, 2015, she has had automatic monthly withdrawals from her account in the

¹⁵ Tr. at 60-63, 67-70; AE M (Personal Financial Change – Intake Sheet, undated).

¹⁶ Tr. at 62-63; AE H (Debt Snowball Payment Schedule, undated); AE I (Monthly Repayment Schedule – October 2015, undated).

¹⁷ GE 4, *supra* note 7.

¹⁸ GE 3, *supra* note 7.

¹⁹ GE 5, *supra* note 7.

²⁰ GE 3, *supra* note 7, at 1.

²¹ GE 5, *supra* note 7, at 3.

²² GE 3, *supra* note 7, at 2.

²³ GE 5, *supra* note 7, at 3.

amount of \$20.²⁴ She also contacted the William D. Ford Federal Direct Loan Program to seek a repayment plan²⁵ as well as a loan consolidation.²⁶ The loan consolidation was completed, and the two loans, in the amounts of \$9,395.95 and \$5,357.58 – amounts far lower than those listed in the credit reports – were consolidated with the remaining combined balance of \$17,890.73. The accounts are in the process of being resolved.

SOR ¶ 1.c.: This is a department store charge account with a credit limit of \$300 and past-due and unpaid balance of \$554 that was placed for collection and charged off.²⁷ The account was eventually transferred or sold to another entity. Applicant contacted the current holder of the account and agreed to a repayment arrangement under which she makes monthly payments of \$15, commencing in September 2015.²⁸ The account is in the process of being resolved.

SOR ¶ 1.d.: This is a department store charge account with a \$200 credit limit, an unpaid balance of \$352, and a past-due balance of \$79. In early 2015, \$446 was charged off, and the account was sold to a debt purchaser.²⁹ Applicant contacted the debt purchaser and agreed to a repayment arrangement under which, since September 2015, she has had automatic monthly withdrawals from her account in the amount of \$26.36.³⁰ The account is in the process of being resolved.

SOR ¶ 1.e.: This is a medical account with an unpaid balance of \$215 that was placed for collection during a period when Applicant's son's medical services were covered by Medicare.³¹ For some reason, Medicare either did not receive the bill or failed to pay it. By the time Applicant learned of the situation, the filing time had elapsed, and, although the school indicated they would take care of the bill, Medicare had no further responsibility.³² Applicant contacted the current holder of the account and agreed to a settlement of \$141 and a repayment arrangement under which she made an initial

²⁴ AE A-2 (Statement of Account, various dates); AE A-1 (Statement, undated); Answer to the SOR, *supra* note 7, at 1; Tr. at 50-52.

²⁵ AE A-3 (Repayment Plan Request, dated January 12, 2016).

²⁶ AE A-4 (Consolidation Loan Application and Promissory Note, dated January 12, 2016).

²⁷ GE 5, *supra* note 7, at 4. The SOR reflects a past-due balance of \$144, which appears to be a "snapshot" view of the account from several months earlier. See GE 3, *supra* note 7, at 2.

²⁸ AE C-1 (Statement, undated); AE C-2 (Screenshot of Payments, undated); AE C-3 (Statement of Account, various dates); Tr. at 52.

²⁹ GE 3, *supra* note 7, at 2; GE 5, *supra* note 7, at 4.

³⁰ AE D-3 (Repayment Agreement, dated August 27, 2015); AE D-1 (Statement, undated); AE D-2 (Statement of Account, various dates); Answer to the SOR, *supra* note 7, at 2; GE 5, *supra* note 7, at 2.

³¹ GE 5, *supra* note 7, at 1; GE 2, *supra* note 7, at 2-3.

³² Tr. at 53.

payment of \$30 in November 2015, and a final payment of \$111 in January 2016.³³ The account has been resolved.

SOR ¶ 1.f.: This is a medical account with an unpaid balance of \$222 that was placed for collection in 2009 during a period when Applicant's son's medical services were covered by Medicare.³⁴ An account under that collection agency's name or in the same amount does not appear in subsequent credit reports. Applicant contends that in speaking with a representative of the current holder of the account identified in SOR ¶ 1.e., it was determined that the two accounts are actually one medical account stemming from services provided in 2007 to Applicant's son when he fractured his wrist. The account was purchased by the current holder in December 2013.³⁵ While Applicant identified the individual she spoke with, and his telephone number, she failed to submit any documentation to support her contention. Nevertheless, in spite of the missing documentation, under the circumstances presented (the disappearance of the account from subsequent credit reports, the identity and telephone number of the source of the information, and Applicant's explanations), it appears that the two allegations are "snapshots" along the timeline of the same account. The account has been resolved.

SOR ¶ 1.g.: This is a medical account with an unpaid balance of \$104 that was placed for collection during a period when Applicant's son's medical services (when he broke a collar bone) were covered by Medicare.³⁶ For some reason, Medicare either did not receive the bill or failed to pay it. An account under that collection agency's name or in the same amount does not appear in subsequent credit reports. Applicant contends that in speaking with a representative of the current holder of the account, it was determined that the initial collection agency had been bought out by the current collection agency and they had no record of the account. Applicant also spoke with the medical billing department of the medical center where the service was provided, and they confirmed to her that the bill had, in fact, been paid by Medicare.³⁷ While Applicant identified the individuals she spoke with, and their telephone numbers, she failed to submit any documentation to support her contention. Nevertheless, in spite of the missing documentation, under the circumstances presented (the disappearance of the account from subsequent credit reports, the identity and telephone numbers of the sources of the information, and Applicant's explanations), it appears that the account has been resolved.

Applicant's personal financial statement indicates a net monthly income of \$1,541.66 as well as \$340 for her son's Social Security Survivor Benefits, for a total of \$1,881.66 (her husband's net monthly income fluctuates but is generally \$3,363.67); her

³³ AE E-1 (Statement, undated); AE E-2 (Letter, dated January 14, 2016); AE E-4 (Statement of Account, dated January 15, 2016); AE E-3 (Money Order, undated); Tr. at 53.

³⁴ GE 4, *supra* note 7, at 10; GE 2, *supra* note 7, at 2-3.

³⁵ AE G (E-mail, dated February 12, 2016); AE J (E-mail, dated February 18, 2016); Tr. at 56.

³⁶ GE 4, *supra* note 7, at 11; GE 2, *supra* note 7, at 2.

³⁷ AE G, *supra* note 35; AE J, *supra* note 35.

normal monthly expenses (reduced because her husband pays a substantial portion of their normal monthly expenses) of \$776.96; her normal monthly debt (both current and delinquent) payments are \$722.36, or a total for monthly expenses and debts is \$1,499.32. Applicant's husband has no personal debts.³⁸ Not counting her husband's income, Applicant generally has a monthly remainder of \$382.34 available for discretionary saving or spending.³⁹ She has dedicated herself to becoming financially stable, and she is also making monthly payments on a non-SOR delinquent account which had an unpaid balance of \$120.⁴⁰ In the absence of any additional unidentified delinquencies, it appears that Applicant's financial problems are finally closer to becoming under control.

Work Performance

Applicant's supervisors over the past four performance rating periods noted her improved performance from "meets expectations" to "consistently exceeds expectations."⁴¹ Applicant's rating on responsibility (accountability for actions, acts in the best interests of the company, and acts in a compliant and ethical manner) has consistently been "meets expectations."⁴²

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."⁴³ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. Positions designated as ADP-I and ADP-II are classified as "sensitive positions."⁴⁴ "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security."⁴⁵ Department of Defense contractor

³⁸ Tr. at 65.

³⁹ AE K Financial Statement, undated).

⁴⁰ AE F-1 (Statement, undated); AE F-2 (Account Summary, dated January 14, 2016); AE F-3 (Statement of Account, dated January 15, 2016).

⁴¹ AE B (Letter: Performance Review, dated February 1, 2016).

⁴² AE B, *supra* note 41.

⁴³ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴⁴ Regulation ¶¶ C3.1.2.1.1.7, C3.1.2.1.2.3, and C3.1.2.2. See *also* Regulation app. 10, ¶ 10.2.

⁴⁵ Regulation ¶ C6.1.1.1.

personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.⁴⁶

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for a public trust position.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and common sense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."⁴⁷ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.⁴⁸

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. Furthermore, security clearance determinations, and by inference, public trust determinations, should err, if they must, on the side of denials.⁴⁹ In reaching this

⁴⁶ Regulation ¶ C8.2.1.

⁴⁷ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁴⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴⁹ *Egan*, 484 U.S. at 531.

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise trustworthiness concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Also, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise trustworthiness concerns. Applicant's initial financial problems arose in mid-2003 when she was forced to drop out of school and relinquish her part-time college work-study position. Thereafter, she had insufficient money to maintain all of her monthly payments. Various accounts became delinquent. Some of those accounts, both SOR and non-SOR, were placed for collection or charged off. Some accounts were sold to debt purchasers. AG ¶¶ 19(a) and 19(c) have been established.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Also, under AG ¶ 20(b), financial trustworthiness concerns may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Evidence that "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."⁵⁰

⁵⁰ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

AG ¶¶ 20(b), 20(c), and 20(d) apply. AG ¶20(a) does not apply. The nature, frequency, and recency of Applicant's continuing multi-year period of financial difficulties since her 2003 pregnancy make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant was confronted with a number of incidents (difficult pregnancies, children's health issues, her own health issues, periods of unemployment or leave without pay, and a truck fire) over which she had little if any control, that facilitate the conclusion that those financial issues occurred under such circumstances that they are unlikely to recur. However, Applicant's expenditure of \$5,000 for her wedding might be considered by some to be excessive under the circumstances. It appears that Applicant has, since her marriage, generally altered her spending ways. Her somewhat lengthy delay in addressing her delinquent accounts was accompanied by repeated unanticipated health-related incidents. She attempted to address her student loans several years before the SOR was issued, but that effort was overcome by subsequent events.

The receipt of the SOR approximately 12 months ago was, for the most part, the motivation or ignition for Applicant's subsequent corrective actions related to her debts: she sought guidance from her financial coach; prioritized her delinquent accounts; set up a debt repayment plan; contacted her creditors to establish repayment plans; and made agreed payments. Her student loans were consolidated and returned from default status. The remaining debts, both SOR and non-SOR, are either resolved or in the process of being resolved. It appears that Applicant's financial problems are closer to becoming under control. Applicant generally has a monthly remainder of \$382.34 available for discretionary saving or spending. As she resolves some of her debts, she can start applying additional funds to her remaining debts. Applicant's actions no longer cast doubt on her current reliability, trustworthiness, or good judgment.⁵¹

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

⁵¹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁵²

There is some evidence against mitigating Applicant's conduct. She failed to make her monthly payments on a variety of accounts, and they became delinquent, resulting in some being charged off. Her student loans went into default.

The mitigating evidence is more substantial and compelling. There is no evidence of misuse of information technology systems, mishandling protected information, or substance abuse. Applicant has been with the same employer since May 2004. Confronted with financial issues following her first pregnancy, Applicant prioritized her accounts and minimized expenses by moving in with her mother. Although she was beset by a variety of health issues, as well as unemployment and periods of leave without pay, she made some efforts to resolve her delinquent accounts. Applicant did not conceal her financial difficulties when completing her e-QIP. Instead, she was honest and forthright, and she reported them. Finally motivated by receipt of the SOR over one year ago, she started to address her debts. Student loans were consolidated and returned to current status, repayment plans were established, payments made, and her accounts are now either resolved or in the process of being resolved. There are clear indications that Applicant's financial problems are closer to becoming under control.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to

⁵² See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.⁵³

Applicant has demonstrated a good track record of debt reduction and elimination efforts, limited only by her modest earnings as a result of a series of issues over which she had little control. Nevertheless, because Applicant is currently in the process of resolving her remaining debts, this decision should serve as a warning that Applicant’s failure to continue her debt resolution efforts pertaining to those remaining accounts, or the actual accrual of new delinquent debts, will adversely affect her future eligibility for a position of public trust.⁵⁴

Overall, the evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a position of public trust. For all of these reasons, I conclude Applicant has mitigated the trustworthiness concerns arising from her financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a. through 1.g.:	For Applicant

⁵³ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

⁵⁴ While this decision should serve as a warning to Applicant as security officials may continue to monitor her finances, this decision, including the warning, should not be interpreted as a conditional eligibility to hold a position of public trust to support a contract with DOD. The Government can re-validate Applicant’s financial status at any time through credit reports, investigation, and interrogatories. Approval of a position of public trust now does not bar the Government from subsequently revoking it, if warranted. “The Government has the right to reconsider the security [or trustworthiness] significance of past conduct or circumstances in light of more recent conduct having negative security [or trustworthiness] significance.” Nevertheless, the Defense Office of Hearings and Appeals (DOHA) has no authority to attach limiting conditions, such as an interim, conditional, or probationary status, to an applicant’s eligibility for a position of public trust. See, e.g., ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006); ISCR Case No. 04-04302 at 5 (App. Bd. June 30, 2005); ISCR Case No. 03-17410 at 4 (App. Bd. Apr. 12, 2005); ISCR Case No. 99-0109 at 2 (App. Bd. Mar. 1, 2000).

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility to occupy a public trust position to support a contract with DOD. Eligibility is granted.

ROBERT ROBINSON GALES
Administrative Judge