



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 15-01124

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel

For Applicant: *Pro se*

08/09/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns regarding financial considerations. Eligibility to occupy a public trust position is denied.

Statement of the Case

On August 30, 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 August 30, 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 28, 2015. In a sworn statement, dated September 14, 2015, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On December 10, 2015, Department Counsel 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, five Government exhibits (GE 1 through GE 5) and one administrative exhibit 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 and submitted five Applicant exhibits (AE A through AE E) that were admitted into evidence without objection. The record closed on February 24, 2016.

Findings of Fact

In her Answer to the SOR, Applicant admitted a number of the factual allegations pertaining to financial considerations (§§ 1.a., 1.c., 1.g., 1.h., 1.k. through 1.m., 1.p., and 1.r.) of the SOR. She denied the remaining allegations. 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 45-year-old employee of a defense contractor. She has been a claims processor for a defense contractor since October 2012. She is seeking to retain her eligibility for occupying a public trust position to support a contract with the DOD. She received a General Educational Development (GED) diploma in 1988.² She has never served in the U.S. military.³ Applicant was married to her first husband in 1989, separated in 1990, and divorced in 1991. They reconciled and remarried in 1993, but were eventually divorced again in 2000. She married her current husband in 2001 and they separated about a year before the hearing.⁴ She has a daughter, born in 1991, and two sons, born in 1990 and 1994.⁵

² GE 2 (Personal Subject Interview, dated October 30, 2012), at 1; GE 1, *supra* note 1, at 11-12.

³ GE 1, *supra* note 1, at 17.

⁴ GE 1, *supra* note 1, at 19-21; GE 2, *supra* note 2, at 2-3; Tr. at 19.

⁵ GE 1, *supra* note 1, at 23-25; GE 2, *supra* note 2, at 3.

Financial Considerations⁶

When Applicant divorced her first husband for the second time in 2000, she was already \$45,000 in debt.⁷ When she married her current husband, he too had earlier support obligations (characterized as child support, but actually alimony because he had no children) to his first wife in the amount of \$45,000, to be paid \$450 per month.⁸ Nevertheless, according to Applicant, there was nothing unusual about her finances until August 2007. She and her husband were both employed, and they generally maintained all their accounts in a current status. Things apparently changed around that time for Applicant initially stated that her financial problems started in August 2007.⁹ She failed to elaborate on the nature or causes of those financial problems. In her e-QIP, Applicant listed periods of unemployment: July 2009 until September 2009; October 2009 until February 2010; and June 2010 until June 2012.¹⁰ During her October 2012 interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant noted that her husband – a pipefitter – was also unemployed from 2009 until June 2012.¹¹ Those periods of unemployment meant Applicant and her family did not have health insurance. Another factor negatively impacting her finances is Applicant having to take leave without pay because of the progression of her Parkinson's Disease which impacts her day-to-day ability to do things, also causing her difficulty with speaking and walking, as well as to involuntarily throw things, cry, and easily get emotional.¹²

As a result of the above factors, including the reduction in family income and loss of health insurance, Applicant was unable to maintain her accounts in a current status. She was forced to prioritize her accounts, and she chose to address what she called the “essentials of life” – food, water, rent, utilities, etc., first – with other accounts next. She failed to timely file her state income tax return for the tax year 2010.¹³ Accounts became delinquent and were placed for collection, charged off, or went to judgment. A vehicle was repossessed. A state tax lien and a judgment lien were also filed. Many accounts were sold to debt purchasers. When questioned by the OPM investigator about her delinquent accounts, Applicant acknowledged most of them, and she indicated: (1) she had some repayment plans in place, and (2) she hoped to have repayment plans

⁶ 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 21, 2012); GE 3 (Equifax Credit Report, dated January 15, 2015); GE 5 (Equifax Credit Report, dated October 29, 2015); GE 2, *supra* note 2; Applicant's Answer to the SOR, dated September 14, 2015. More recent information can be found in the exhibits furnished and individually identified.

⁷ Tr. at 28-30.

⁸ Tr. at 32-35.

⁹ GE 1, *supra* note 1, at 37-47.

¹⁰ GE 1, *supra* note 1, at 13-15.

¹¹ GE 2, *supra* note 2, at 9; Tr. at 53.

¹² Tr. at 24, 51-52; AE A (Leave History, dated February 13, 2016).

¹³ GE 2, *supra* note 2, at 3.

established for other known accounts by early 2013. As for the accounts that she did not recognize, she stated she would dispute all such accounts, and if they turn out to be her accounts, she would also try to set up repayment arrangements by early 2013.¹⁴

The SOR identified 18 purportedly continuing delinquent accounts, totaling approximately \$15,812, as reflected by the September 2012 credit report,¹⁵ the January 2015 credit report,¹⁶ and the October 2015 credit report.¹⁷ Applicant's Answer to the SOR included responses to a number of those accounts that differed from her explanations given during her OPM interview. Some accounts that she had acknowledged during the interview were no longer recognized by her in her Answer to the SOR. During the hearing, some positions and explanations again changed. All of the 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.: This is a state tax lien in the amount of \$331 that was filed against Applicant in June 2010. Applicant claimed that in October 2012 she agreed to a repayment plan under which she would make monthly payments of \$50 commencing in November 2012. Applicant's husband was supposed to make the payments, but Applicant was not sure if he ever did so. Furthermore, when she finally asked him about the payments, he admitted that he had forgotten about them.¹⁸ As of the closing of the record, no documentation indicating either a repayment plan or payments had been submitted to me by Applicant. The account remains unresolved.

SOR ¶ 1.b.: This is a judgment in the amount of \$257 that Applicant initially identified as the unpaid balance on a loan for the purchase of a 2004 Jeep that was repossessed in 2009.¹⁹ She subsequently denied having any knowledge of the debt.²⁰ During the hearing, she acknowledged that she had not made any effort to identify the creditor.²¹ The account remains unresolved.

SOR ¶ 1.c.: This is an automobile loan with a high credit of \$17,440 that was placed for collection and charged off in the amount of \$9,417. The account was

¹⁴ GE 2, *supra* note 2, at 9.

¹⁵ GE 4, *supra* note 6.

¹⁶ GE 3, *supra* note 6.

¹⁷ GE 5, *supra* note 6.

¹⁸ Tr. at 19-26.

¹⁹ GE 2, *supra* note 2, at 4, 6.

²⁰ Tr. at 44; Applicant's Answer to the SOR, *supra* note 6, at 1.

²¹ Tr. at 44.

transferred or sold to another collection agent.²² Applicant initially could not identify the account, the creditor, or the collection agent,²³ but subsequently acknowledged the loan was for an automobile that she eventually voluntarily returned in 2013 because her medical condition made it difficult for her to drive. The vehicle was to be sold by the creditor, and she was to be responsible for the remaining unpaid balance. During the hearing, she gave inconsistent stories regarding contacting the creditor. First she acknowledged that she had not made any effort to contact the creditor,²⁴ but then she said she had.²⁵ The account remains unresolved.

SOR ¶¶ 1.d., 1.e., 1.j., 1.n., and 1.o.: These are medical accounts with unpaid balances of \$2,535, \$1,709, \$210, \$93, and \$55. At one point, Applicant denied knowing anything about some of the debts. During her OPM interview in October 2012, Applicant said she would contact the creditors and resolve as many of the accounts as possible. She failed to do so, claiming that the progression of her illness prevented her from following up on her promise.²⁶ With the exception of the one account for \$210 (for which Applicant claimed she made payments of \$25 starting in August 2012),²⁷ Applicant offered no evidence of any contacts, repayment arrangements, or payments pertaining to any of the accounts. As to the one account for which payments were claimed, she failed to submit any documentation to support her claim. The accounts remain unresolved.

SOR ¶ 1.f.: This is a furniture store charge account with a credit limit of \$740 and a past-due balance of \$300 that was placed for collection.²⁸ Applicant contended she had paid the account in full,²⁹ but she failed to submit any documentation to support her contention. The account remains unresolved.

SOR ¶ 1.g.: This is a bank credit card account with a credit limit of \$300 and a past-due balance of \$514 that was placed for collection and charged off.³⁰ Applicant initially claimed that she had paid off the entire balance in October 2012.³¹ She subsequently stated that when she moved she never received another statement from

²² GE 4, *supra* note 6, at 10; GE 5, *supra* note 6, at 3.

²³ GE 2, *supra* note 2, at 8.

²⁴ Tr. at 46.

²⁵ Tr. at 48.

²⁶ Tr. at 50-51.

²⁷ GE 2, *supra* note 2, at 4-5.

²⁸ GE 3, *supra* note 6, at 2.

²⁹ Tr. at 54-55.

³⁰ GE 5, *supra* note 6, at 3.

³¹ GE 2, *supra* note 2, at 7.

the creditor. Since she received the SOR, Applicant has made no effort to resolve the remaining unpaid balance.³² The account remains unresolved.

SOR ¶ 1.h.: This is an unspecified type of loan account with an unpaid balance of \$312 that was placed for collection and charged off.³³ Applicant purportedly contacted the collection agent “the other day” and was advised that the remaining balance had been reduced to \$157.³⁴ She offered no testimonial or documentary evidence of having entered into any repayment arrangements or making any payments. The account remains unresolved.

SOR ¶ 1.i.: This is a clothing store charge account with a credit limit of \$100 and a high credit of \$297 that was placed for collection and charged off in October 2011. The account was sold to a debt purchaser.³⁵ Applicant could not identify the account, the creditor, or the eventual debt purchaser.³⁶ The account remains unresolved.

SOR ¶ 1.k.: This is a credit card account with an unpaid balance of \$202 that was placed for collection and charged off in October 2009.³⁷ Applicant said she contacted the creditor in 2012 and gave them her new address. She acknowledged that she has not been in contact with the creditor since 2012.³⁸ The account remains unresolved.

SOR ¶¶ 1.l. and 1.r.: These are two cellular telephone accounts with unpaid balances of \$200 (an account for Applicant’s daughter) and \$602 (an account for Applicant) that were placed for collection.³⁹ Applicant offered no testimonial or documentary evidence of having entered into any repayment arrangements or making any payments for either account. The accounts remain unresolved.

SOR ¶¶ 1.m. and 1.p.: These are two credit card accounts with unpaid balances of \$196 and \$454 that were placed for collection and charged off.⁴⁰ Applicant offered no testimonial or documentary evidence of having entered into any repayment arrangements or making any payments for either account. The accounts remain unresolved.

³² Tr. at 55-56.

³³ GE 5, *supra* note 6, at 4.

³⁴ Tr. at 56.

³⁵ GE 4, *supra* note 6, at 10; GE 5, *supra* note 6, at 2.

³⁶ Tr. at 56; Applicant’s Answer to the SOR, *supra* note 6, at 2.

³⁷ GE 4, *supra* note 6, at 8; GE 5, *supra* note 6, at 4; GE 2, *supra* note 2, at 5.

³⁸ Tr. at 59-60.

³⁹ GE 4, *supra* note 6, at 11; GE 5, *supra* note 6, at 2.

⁴⁰ GE 4, *supra* note 6, at 5; GE 5, *supra* note 6, at 2.

SOR ¶ 1.q.: This is an unspecified type of account with an unpaid and past-due balance of \$326 that was placed for collection and sold to a debt purchaser.⁴¹ Applicant initially claimed to have no knowledge of the account, but subsequently claimed that it was one of the accounts for which she was responsible after her second divorce from her first husband.⁴² Applicant offered no testimonial or documentary evidence of having entered into any repayment arrangements or making any payments for the account. The account remains unresolved.

During a good month, when she is not too sick to work, Applicant's net monthly income, including salary and spousal assistance, is generally \$1,350. Her normal monthly expenses, including expenses for her unemployed daughter's mental health issues, her daughter's boyfriend, and her granddaughter, is \$1,359.⁴³ That leaves Applicant with a negative remainder of \$9, with insufficient funds to make any payments towards her delinquent accounts. Applicant does not maintain a budget, and she simply pays bills if she can do so.⁴⁴ When asked what her plan was to resolve her accounts, Applicant responded that she wanted to pay her bills. She was advised that her statement constituted a desire, not an established plan. When afforded the opportunity to supplement the record with documentation supporting her contentions that repayment plans had been established; that payments were made to creditors both listed in the SOR as well as other unlisted creditors; that disputes had been filed; that additional contacts with creditors had been made; that a budget had been created; or that financial counseling had been received, she failed to follow up on that opportunity. It appears that Applicant's financial problems are not any closer to becoming under control.

Character References

Three friends who have known her for between two and six years characterized Applicant as dependable, reliable, hard-working, conscientious, honest, respected, and trustworthy.⁴⁵

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."⁴⁶ As Commander in Chief, the President has the authority to control access to information bearing on national

⁴¹ GE 4, *supra* note 9, at 6.

⁴² Tr. at 65; Applicant's Answer to the SOR, *supra* note 6, at 3.

⁴³ AE B (Financial Statement, undated).

⁴⁴ Tr. at 68-69.

⁴⁵ AE C (Character Reference, dated February 17, 2016); AE D (Character Reference, dated February 16, 2016); AE E (Character Reference, dated February 11, 2016).

⁴⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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.”⁴⁷ “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.”⁴⁸ Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.⁴⁹

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.”⁵⁰ 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.⁵¹

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

⁴⁷ 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.

⁴⁸ Regulation ¶ C6.1.1.1.

⁴⁹ Regulation ¶ C8.2.1.

⁵⁰ “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).

⁵¹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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.⁵² In reaching this 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. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise trustworthiness concerns. Although Applicant claimed that her financial problems did not start until August 2007, they actually started in 2000, when she was already \$45,000 in debt following her second divorce from her first husband. At some point, Applicant had insufficient money to maintain all of her monthly payments. Various accounts became delinquent and were placed for collection, charged off, or sent to judgment. 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

⁵² *Egan*, 484 U.S. at 531.

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.”⁵³ In addition, AG ¶ 20(e) may apply if “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the basis of the dispute or provides evidence of actions to resolve the issue.”

AG ¶ 20(b) partially applies. AG ¶¶ 20(a), 20(c), 20(d), and 20(e) do not apply. The nature, frequency, and recency of Applicant’s continuing financial difficulties since at least 2007 make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” It is clear that Applicant’s and her current husband’s periods of unemployment, as well as her health conditions, created financial hardships that made it difficult to maintain her accounts in a current status. She was forced to prioritize her accounts, and she chose to address what she called the “essentials of life” first, with other accounts next. Accounts became delinquent and were placed for collection, charged off, or went to judgment. Many were sold to debt purchasers.

Applicant offered no documentary evidence of a good-faith effort to resolve any of her accounts. She contended she entered into some repayment arrangements and made some payments, but failed to submit any documentation such as receipts, cancelled checks, account records, etc., to support her contentions. There is no evidence that Applicant took any positive action to resolve her accounts either before or since her October 2012 OPM interview. Over the years, she failed to pay or resolve accounts with balances as low as \$55, \$93, \$196, and \$200.

Without even superficial examination of some of the accounts, Applicant merely “disputed” them because accounts with a particular identified creditor, debt purchaser, or collection agent were not recognized by her. Applicant failed to submit any documentation to support her contentions that she had filed such disputes. Merely disputing certain accounts because they were not recognized, without substantially more, and without any substantiating documentation, is not sufficient to prove those

⁵³ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

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)).

disputes. In this instance, Applicant should have had greater familiarity with her various accounts, or an enhanced interest in following through on disputed issues.

Trustworthiness adjudications are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The adjudicative guidelines do not require an applicant to establish resolution of each and every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in an SOR be paid first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time. In this instance, there is a verbal alleged plan to resolve financial problems, but there is little documentation to support the existence of such a plan.

In this instance, there are purported actions taken, but there is no documentation to support the existence of any of Applicant's claimed actions or payments. She failed to submit her proposed repayment plan related to her accounts with a repayment schedule, or repayment arrangements supposedly entered into with various creditors, or proof of past payments. Applicant has not acted responsibly by failing to timely address her delinquent accounts or the judgments filed against her.⁵⁴ Applicant's relative inaction under the circumstances confronting her cast substantial doubt on her current reliability, trustworthiness, and good judgment.⁵⁵

There is no evidence to indicate that Applicant ever received financial counseling. Based on the information furnished, it appears that Applicant has no funds remaining at the end of each month for discretionary use or savings. As reported by her, there is a deficit of \$9 each month. There is no evidence to reflect that Applicant's financial problems are under control. To the contrary, the overwhelming evidence leads to the conclusion that Applicant's financial problems are not under control.

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):

⁵⁴ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

⁵⁵ 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.⁵⁶

There is some evidence in favor of mitigating Applicant's conduct. There is no evidence of misuse of information technology systems, mishandling protected information, or substance abuse. Applicant has worked with the same employer since October 2012. She is a loving, caring mother and grandmother. Confronted with financial issues following her second divorce from her first husband, her periods of unemployment, his second husband's period of unemployment, and her health issues, Applicant prioritized her accounts. With only a very modest annual income, she apparently 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 some of them.

The disqualifying evidence is more substantial and compelling. Applicant contended she paid a number of her accounts, but she failed to submit any documentation such as receipts, cancelled checks, account records, etc., to support her contentions. Applicant has failed to take any positive action to resolve any of the accounts even after her 2012 OPM interview. Although she was urged to submit documentation to support her contentions that she had entered into a number of repayment agreements with her creditors and had made a number of payments to creditors and collection agencies, she failed to submit such materials. She has not received any financial counseling. There are clear indications that Applicant's financial problems are no 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

⁵⁶ 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).

