



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02119

Appearances

For Government: David F. Hayes, Esquire, Department Counsel

For Applicant: *Pro se*

03/24/2017

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On September 9, 2010, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (1st e-QIP). On September 23, 2012, she submitted another e-QIP (2nd e-QIP). On September 29, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to her, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to

grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear as to when Applicant received the SOR as there is no receipt in the case file. In an undated statement, Applicant responded to the SOR and apparently elected to have her case decided on the written record in lieu of a hearing.¹ A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on February 4, 2016, and she was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to her case. Applicant received the FORM on February 20, 2016. Applicant's response was due on March 21, 2016. On an unspecified date, Applicant responded to the FORM and submitted several documents to which, on March 22, 2016, Department Counsel did not object. They were marked as Applicant exhibits (AE) A through AE X. The case was assigned to me on May 25, 2016.

Findings of Fact

In her Answer to the SOR, Applicant admitted, with comments, all of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.ee.) of the SOR. Applicant's admissions and comments 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 49-year-old employee of a defense contractor. She has been a material coordinator with the company since October 2010. She held a similar position with a different defense contractor from August 2002 until October 2010. She is a June 1985 high school graduate. Applicant has never served in the U.S. military. She was granted a secret security clearance in August 2002. Applicant was married in August 1985 and divorced in December 2002. She remarried in April 2003. She has four children (two daughters born in 1988 and 1991, and two sons born in 2003 and 2005).

¹ Although Department Counsel indicated that Applicant responded to the SOR on November 12, 2015, and that she had requested a decision on the written record in lieu of a hearing, there is no notary public segment of the Answer or indication of the requested type of forum in the case file. The Answer to the SOR in the case file is merely an unsigned two-page document which addressed each of the SOR allegations. See Answer to the SOR, undated).

Financial Considerations²

Applicant's initial financial problems arose in mid-2001 when she filed for divorce from her first husband and he refused to pay for any of her living expenses. When the divorce was finalized in December 2002, she was left with approximately \$18,000 in debt because of her living expenses and attorney fees. After she remarried in April 2003, Applicant became responsible for medical expenses when her older daughter developed a drug addiction and was treated at two separate rehabilitation centers. One of Applicant's sons was afflicted with autism and was bipolar, and those conditions caused her to spend \$400 per month in additional expenses. In addition, Applicant's current husband endured several salary reductions, and the combined result of those factors severely reduced the family income. In September 2005, Applicant and her husband filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code. In January 2006, between \$17,000 and \$18,000 in liabilities were discharged.³ Applicant's financial problems were eased, but not necessarily resolved.

Several years later, Applicant's husband again started experiencing financial problems when his employer discontinued bi-weekly bonuses and overtime, followed by a series of three ten percent wage reductions. When his lost income reached 50 percent, he obtained a part-time second job. When that new employer offered him a full-time position with benefits and an advancement opportunity, he submitted his two-week notice to his full-time employer. At about the same time, the full-time employer filed for bankruptcy to restructure its business. Applicant's husband's pension was frozen and unavailable to him for nearly one year, until the funds were released in June 2010. With those funds frozen, Applicant and her husband were unable to maintain their accounts in a current status. Applicant also underwent eight skin cancer surgeries in less than a one-year time frame that could not be postponed. In October 2013, Applicant and her husband filed for bankruptcy, this time under Chapter 13, of the U.S. Bankruptcy Code.⁴

Under the Chapter 13 repayment plan, Applicant has until November 2018 to pay the Bankruptcy Trustee \$36,000 in satisfaction of the plan. That plan calls for Applicant to make monthly payments of \$300 to the Trustee. Applicant made her first four payments of \$600 each, commencing in January 2015 – eight months before the SOR was issued – and she has continued making the expected monthly \$300 payments since April 2015. As of January 26, 2016, Applicant had paid the Trustee \$15,900. As of March 11, 2016, that amount had increased to \$17,100. The Trustee, in turn, has prioritized the claims and

² General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 2 (1st e-QIP, dated September 9, 2010); Item 3 (2nd e-QIP, dated September 23, 2012); Item 5 (Personal Subject Interview, dated November 4, 2010); Item 4 (Personal Subject Interview, dated October 25, 2012); Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated October 26, 2010); Item 7 (Equifax Credit Report, dated February 12, 2015); Item 7 (Combined Experian, TransUnion, and Equifax Credit Report, dated October 4, 2012); Item 8 (Equifax Credit Report, dated September 3, 2015).

³ Answer to SOR, *supra* note 1, at 1; Item 5, *supra* note 2, at 1; Item 4, *supra* note 2, at 1.

⁴ Answer to SOR, *supra* note 1, at 1; Item 5, *supra* note 2, at 1; Item 4, *supra* note 2, at 1.

has paid a number of creditors various amounts, and in some situations, paid certain creditors the entire amount owed.⁵

In addition to the two bankruptcies, the SOR identified 29 purportedly delinquent debts that had been placed for collection or charged off, as generally reflected by Applicant's October 2010 credit report, her October 2012 credit report, or her February 2015 credit report. Those debts, total approximately \$46,741. However, the SOR alleged a significant number of delinquent accounts that were actually separate snapshots of the same accounts, substantially magnifying the alleged total. The current status of the alleged accounts, according to the credit reports, other evidence submitted by the Government, and Applicant's comments regarding same, are described below.

(SOR ¶ 1.c.) refers to an automobile loan with a high credit of \$10,251 and an unpaid balance of \$3,002, of which \$502 was past due, that was placed for collection.⁶ The account was included as a \$4,131.09 claim in Applicant's Chapter 13 Bankruptcy Petition. The Trustee's annual summary report reflects that \$4,123.79 was paid before January 26, 2016, and a hand-written notation indicates that the remaining balance of \$7.30 was paid, leaving a zero balance.⁷ The debtor claim summary reflects the payment of the full claim amount.⁸ The account has been resolved.

(SOR ¶ 1.d.) refers to an unspecified type of account with a high credit, past due and unpaid balance of \$1,182, that was placed for collection and charged off.⁹ The account was included as a \$1,000 claim in Applicant's Chapter 13 Bankruptcy Petition. The Trustee's annual summary report reflects that the claim was disallowed by the Trustee, and there is a zero balance owed.¹⁰ The account has been resolved.

(SOR ¶ 1.e.) refers to a medical account with an unidentified creditor with an unpaid balance of \$447 that was placed for collection.¹¹ Although there are some medical accounts included in the Trustee's annual summary report, it is unclear if this particular claim is one of them. At this point, there is insufficient evidence to support a conclusion

⁵ Answer to SOR, *supra* note 1, at 1; AE A (Annual Chapter 13 Summary Report, dated January 26, 2016); AE D Debtor Dashboard – Overview, dated March 11, 2016).

⁶ Item 6, *supra* note 2, at 9, 12; Item 7, *supra* note 2, at 8; Item 8, *supra* note 2, at 1.

⁷ AE A, *supra* note 5.

⁸ AE C (Debtor Claim Summary, undated).

⁹ Item 8, *supra* note 2, at 2.

¹⁰ AE A, *supra* note 5. In order to receive any payments through the Chapter 13 Bankruptcy Plan, a creditor is required to timely file a proof of claim with supporting documentation to back up the claim in order to be valid. See Federal Rules of Bankruptcy Procedure (FRBP) Rules 3001(a) and 3001(c). Invalid claims may be disallowed by the Bankruptcy Trustee.

¹¹ Item 8, *supra* note 2, at 2.

that the account is in the process of being resolved. Accordingly, the account has not been resolved.

(SOR ¶¶ 1.f. and 1.p.) refer to one medical account with an unidentified creditor (although one credit report identified the collection agent) with an unpaid balance of \$391 that was placed for collection.¹² As noted above, although there are some medical accounts included in the Trustee's annual summary report, it is unclear if this particular claim is one of them. At this point, there is insufficient evidence to support a conclusion that the account is in the process of being resolved. Accordingly, the account has not been resolved.

(SOR ¶¶ 1.g., 1.t., 1.aa., 1.bb., 1.cc., and 1.dd.) refer to various medical accounts with unidentified creditors (although two credit reports identified the collection agents for several accounts) with unpaid balances of \$100, \$46, \$404, \$503, \$334, and \$246 that were placed for collection.¹³ As noted above, although there are some medical accounts included in the Trustee's annual summary report, it is unclear if these particular claims are any of them. At this point, there is insufficient evidence to support a conclusion that the accounts are in the process of being resolved. Accordingly, the accounts have not been resolved.

(SOR ¶¶ 1.h. and 1.u.) refer to one satellite television account with an unpaid balance of \$154 that was placed for collection.¹⁴ At some point before November 2010 – approximately five years before the SOR was issued – the account was paid, leaving a zero balance.¹⁵ Although there are some unspecified accounts included in the Trustee's annual summary report, it is unclear if this particular claim is one of them. At this point, there is insufficient evidence to support a conclusion that the account is in the process of being resolved. Accordingly, the account has not been resolved.

(SOR ¶ 1.i.) refers to a bank credit card account with a high credit of \$954 that was placed for collection and charged off in March 2010. Applicant's October 2010 credit report lists that \$0 was charged off and the account was sold to a debt purchaser.¹⁶ The debt purchaser increased the unpaid balance to \$1,142.¹⁷ Confusing the situation, Applicant's February 2015 credit report reflects that the account had a high credit of \$473 with a zero balance because of the charge-off and the sale.¹⁸ The SOR alleged that \$473 was charged off. The account was apparently resold, and it was included as a \$954.30

¹² Item 7, *supra* note 2, at 7; Item 8, *supra* note 2, at 2.

¹³ Item 6, *supra* note 2, at 16, 18, 20; Item 7, *supra* note 2, at 10, 12-13; Item 8, *supra* note 2, at 2.

¹⁴ Item 6, *supra* note 2, at 19.

¹⁵ Item 7, *supra* note 2, at 10; Item 8, *supra* note 2, at 2.

¹⁶ Item 6, *supra* note 2, at 12.

¹⁷ Item 7, *supra* note 2, at 17.

¹⁸ Item 8, *supra* note 2, at 2.

claim in Applicant's Chapter 13 Bankruptcy Petition. The Trustee's annual summary report reflects that the balance due is \$143.15.¹⁹ The account is in the process of being resolved.

(SOR ¶ 1.j.) refers to a bank credit card account with a high credit of \$1,164 that was placed for collection and charged off in March 2010. Applicant's October 2010 credit report lists that \$0 was charged off and the account was sold to a debt purchaser.²⁰ Applicant's February 2015 credit report reflects that the account had a high credit of \$491 with a zero balance because of the charge-off and the sale.²¹ The SOR alleged that \$491 was charged off. The account was apparently resold, and it was included as a \$1,164.02 claim in Applicant's Chapter 13 Bankruptcy Petition. The Trustee's annual summary report reflects that the balance due is \$174.60.²² The account is in the process of being resolved.

(SOR ¶¶ 1.k. and 1.w.) refer to one bank-issued charge account for a home improvement center with a \$300 credit limit and an unpaid balance of \$478 that was placed for collection and charged off in January 2010.²³ Applicant's October 2012 credit report lists that the account was sold to a debt purchaser.²⁴ Applicant's February 2015 credit report reflects that the account had a high credit of \$479 with an unpaid balance of \$538.²⁵ The account was included as a \$478.98 claim in Applicant's Chapter 13 Bankruptcy Petition. The Trustee's annual summary report reflects that the balance due is \$71.85.²⁶ The account is in the process of being resolved.

(SOR ¶¶ 1.l., 1.q., and 1.x.) refer to one bank-issued charge account for a flooring and carpet store with a \$4,500 credit limit and an unpaid balance of \$3,944, of which \$902 was past due. The account was placed for collection and \$3,944 was charged off in March 2010.²⁷ Applicant's October 2010 and October 2012 credit reports list that the account was sold to a debt purchaser.²⁸ Applicant's February 2015 credit report reflects that the

¹⁹ AE A, *supra* note 5.

²⁰ Item 6, *supra* note 2, at 9, 17.

²¹ Item 8, *supra* note 2, at 2.

²² AE A, *supra* note 5.

²³ Item 6, *supra* note 2, at 15; Item 7, *supra* note 2, at 11. It should be noted that the two allegations are worded identically (with the exception of one partial word) and neither allegation included an account number or the amount supposedly owed.

²⁴ Item 7, *supra* note 2, at 11.

²⁵ Item 7, *supra* note 2, at 20.

²⁶ AE A, *supra* note 5.

²⁷ Item 6, *supra* note 2, at 14; Item 7, *supra* note 2, at 11; Item 5, *supra* note 2, at 3. It should be noted that the two allegations are worded identically (with the exception of one partial word) and neither allegation included an account number or the amount supposedly owed.

²⁸ Item 6, *supra* note 2, at 14; Item 7, *supra* note 2, at 11.

account had a high credit of \$479 with an unpaid balance of zero.²⁹ It is unclear if the account was included as a claim in Applicant's Chapter 13 Bankruptcy Petition. There is, however, a claim with a debt purchaser in the amount of \$4,305.13 that may be the one in question.³⁰ However, in the absence of some evidence furnishing a nexus between the account(s) it is difficult to conclude that the account is in the process of being resolved. The account has not been resolved.

(SOR ¶¶ 1.m. and 1.z.) refer to one bank-issued charge account for a retail superstore with a \$600 credit limit and an unpaid balance of \$977 that was placed for collection and charged off in March 2010.³¹ Applicant's October 2012 and February 2015 credit reports list that the account was sold to a debt purchaser.³² The account was included as a \$977.86 claim in Applicant's Chapter 13 Bankruptcy Petition. The Trustee's annual summary report reflects that the balance due is \$146.68.³³ The account is in the process of being resolved.

(SOR ¶ 1.n.) refers to a store charge card with a \$500 credit limit and a past due amount of \$894 that was placed for collection and charged off in December 2009. Applicant's October 2010 credit report lists that \$895 was charged off.³⁴ Applicant's October 2012 and February 2015 credit reports reflect that the account was sold to a debt purchaser.³⁵ The account was included as a \$895 claim in Applicant's Chapter 13 Bankruptcy Petition. The Trustee's annual summary report reflects that the balance due is \$134.35.³⁶ The account is in the process of being resolved.

(SOR ¶ 1.o.) refers to a telecommunications account with an unpaid and past-due balance of \$253 that was placed for collection.³⁷ Applicant's February 2015 credit report does not list the account. It is unclear if the account was included as a claim in Applicant's Chapter 13 Bankruptcy Petition as there is no claim closely resembling it by creditor/collection agent name, or claim amount. In the absence of some evidence

²⁹ Item 8, *supra* note 2, at 3.

³⁰ AE A, *supra* note 5.

³¹ Item 6, *supra* note 2, at 15. It should be noted that the two allegations are worded identically (with the exception of one partial word) and neither allegation included an account number or the amount supposedly owed.

³² Item 7, *supra* note 2, at 11; Item 8, *supra* note 2, at 12.

³³ AE A, *supra* note 5.

³⁴ Item 6, *supra* note 2, at 10.

³⁵ Item 7, *supra* note 2, at 20; Item 8, *supra* note 2, at 3.

³⁶ AE A, *supra* note 5.

³⁷ Item 7, *supra* note 2, at 6. In her Answer to the SOR, Applicant erroneously misidentified the account as a medical account.

furnishing a nexus between the account and a claim, it is difficult to conclude that the account is in the process of being resolved. The account has not been resolved.

(SOR ¶ 1.r.) refers to a cellular telephone account with an unpaid balance of \$438 that was placed for collection.³⁸ Applicant's February 2015 credit report does not list the account. It is unclear if the account was included as a claim in Applicant's Chapter 13 Bankruptcy Petition as there is no claim closely resembling it by creditor/collection agent name, or claim amount. In the absence of some evidence furnishing a nexus between the account and a claim, it is difficult to conclude that the account is in the process of being resolved. The account has not been resolved.

(SOR ¶ 1.s.) refers to a cable account with an unpaid and past-due balance of \$125 that was placed for collection.³⁹ Applicant's February 2015 credit report does not list the account. It is unclear if the account was included as a claim in Applicant's Chapter 13 Bankruptcy Petition as there is no claim closely resembling it by creditor/collection agent name, or claim amount. In the absence of some evidence furnishing a nexus between the account and a claim, it is difficult to conclude that the account is in the process of being resolved. The account has not been resolved.

(SOR ¶ 1.v.) refers to a bank-issued clothing store charge account with an unpaid balance of \$450 that was placed for collection and charged off in May 2010.⁴⁰ Applicant's October 2010 credit report lists that \$0 was charged off and the account was sold to a debt purchaser.⁴¹ Applicant's February 2015 credit report does not list the account. It is unclear if the account was included as a claim in Applicant's Chapter 13 Bankruptcy Petition as there is no claim closely resembling it by creditor/collection agent name, or claim amount. In the absence of some evidence furnishing a nexus between the account and a claim, it is difficult to conclude that the account is in the process of being resolved. The account has not been resolved.

(SOR ¶ 1.y.) refers to a bank-issued clothing store charge account with an unpaid balance of \$150 that was placed for collection and charged off in May 2010.⁴² Applicant's October 2010 credit report lists that \$0 was charged off and the account was sold to a debt purchaser.⁴³ Applicant's February 2015 credit report does not list the account. It is unclear if the account was included as a claim in Applicant's Chapter 13 Bankruptcy Petition as there is no claim closely resembling it by creditor/collection agent name, or claim amount. In the absence of some evidence furnishing a nexus between the account

³⁸ Item 7, *supra* note 2, at 7.

³⁹ Item 7, *supra* note 2, at 8.

⁴⁰ Item 6, *supra* note 2, at 14.

⁴¹ Item 6, *supra* note 2, at 14.

⁴² Item 6, *supra* note 2, at 14.

⁴³ Item 6, *supra* note 2, at 14.

and a claim, it is difficult to conclude that the account is in the process of being resolved. The account has not been resolved.

(SOR ¶ 1.ee.) refers to a bank-issued second mortgage with a high credit of \$39,343 and an unpaid and past due balance of \$34,914 that was placed for collection in 2012. Applicant had been paying the account under a partial or modified payment agreement.⁴⁴ The account was purportedly charged off and sold to another servicing agent/debt purchaser.⁴⁵ The account was included as a \$34,414.78 claim in Applicant's Chapter 13 Bankruptcy Petition. The Trustee's annual summary report reflects that the balance due is \$5,162.22.⁴⁶ The account is in the process of being resolved.

Applicant's Chapter 13 repayment plan includes 21 different claims, including Applicant's bankruptcy attorney, medical providers, mortgage lenders and servicing agents, collection agencies, and other unspecified entities. Several of the creditors cannot be aligned with any of the SOR-related creditors. The Bankruptcy Trustee's Annual Chapter 13 Summary Report included claims that were not addressed in the SOR. Applicant's mortgage arrearage of \$6,512.92 was paid in full.⁴⁷ During Applicant's mortgage loan modification process she received required credit counseling.⁴⁸

While Applicant did not submit a Personal Financial Statement to reflect her monthly expenses or any monthly remainder, which might be available for discretionary spending or savings, she did submit a Paystub for the two-week pay period ending February 15, 2016. It reflected a \$300 deduction (to the Bankruptcy Trustee), and her net monthly income to be \$2,578.62.⁴⁹ It appears that Applicant's finances are finally under control.

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."⁵⁰ As Commander in Chief, the President has

⁴⁴ Item 6, *supra* note 2, at 8.

⁴⁵ Item 7, *supra* note 2, at 22.

⁴⁶ AE A, *supra* note 5.

⁴⁷ AE A, *supra* note 5; AE C, *supra* note 8; AE B (Notice of Mortgage Payment Change, dated December 1, 2015). Because of the way creditors and collection agents are identified (or not identified) in the credit reports and in the SOR, it is extremely difficult to determine, with significant accuracy, that all of the creditors have been covered. Under the rules of a Chapter 13 Bankruptcy, creditors that have not been identified and listed in the Bankruptcy Petition, and who have not received notice of the bankruptcy, will have their claims remain unaffected by the bankruptcy. Those that have been so notified, regardless of their identity (such as actual creditor, collection agent, or debt purchaser), will have their respective claim handled by the Bankruptcy Trustee.

⁴⁸ Item 4, *supra* note 2, at 3.

⁴⁹ AE G (Paystub, dated February 22, 2016).

⁵⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁵¹

When evaluating an applicant’s suitability for a security clearance, 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 access to classified information.

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 commonsense 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.”⁵² 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.⁵³

A person who seeks access to classified 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 classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather

⁵¹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁵² “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).

⁵³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁵⁴

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁵⁵ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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 security 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 classified 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 security 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 security concerns. Applicant’s financial problems initially arose in mid-2001 and were eased, but not necessarily resolved, by her Chapter 7 bankruptcy discharge in 2006. Accounts again became delinquent during 2010-12. She filed for bankruptcy under Chapter 13 in 2013. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security 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 security 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),

⁵⁴ *Egan*, 484 U.S. at 531.

⁵⁵ See Exec. Or. 10865 § 7.

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.”⁵⁶ 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(a), 20(b), 20(c), and 20(d) apply. AG ¶ 20(e) does not apply. Applicant’s initial financial problems were associated with the costs of her divorce from her first husband, medical expenses associated with her daughter’s drug addiction, her son’s conditions, and her husband’s salary reductions. They were not caused by personal frivolous or irresponsible spending. Those financial problems were eased, but not necessarily resolved by her Chapter 7 bankruptcy discharge in 2006. Financial problems arose again several years later when Applicant’s husband started encountering more financial difficulties with his employer. Bi-weekly bonuses and overtime were discontinued, and three wage reductions resulted in the loss of 50 percent of his wages. The bankruptcy of the employer and the freezing of Applicant’s husband’s pension for nearly one year created financial difficulties, and Applicant’s surgeries added to those difficulties. All of the above factors were largely beyond Applicant’s control.

In October 2013, nearly two years before the SOR was issued, Applicant filed for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code. Under her repayment plan, Applicant has until November 2018 to pay the Bankruptcy Trustee \$36,000 in satisfaction of the plan. Under the plan, she makes monthly payments of \$300 to the Trustee. As of March 11, 2016, Applicant had paid \$17,100. The Trustee, in turn, prioritized the claims and has paid a number of creditors various amounts, and in some situations, paid certain creditors the entire amount owed. Applicant received credit counseling. She obtained a home loan modification, and she has eliminated her former arrearage. While she may have been confused regarding the source of several delinquent accounts, there is documentation to support many of Applicant’s contentions and efforts. As noted above, several alleged debts are actually either snapshots of the same accounts, or merely duplicate allegations of the same accounts.

⁵⁶ 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)).

Clearance decisions 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.

There is a substantial risk when one accepts, at face value, the contents of credit reports without obtaining original source documentation to verify entries. Credit bureaus collect information from a variety of sources, including public records and "other sources," and it is these other unidentified sources that are the cause for concern. Likewise, when accounts are transferred, reassigned, sold, or merely churned, an individual's credit history can look worse than it really is. In this particular instance, the combined credit reports referred to numerous creditors for relatively few delinquent accounts. Because of abbreviated names and acronyms (and in some instances, no creditor identities), multiple and partial account numbers for the same account listed several times under different creditors, debt purchasers, or collection agents, many of those entries are garbled and redundant, and have inflated the financial concerns. Likewise, when the information in the credit reports is simply transferred to the SOR without simple vetting for accuracy, and essential information, such as the identity of the creditor, the accurate account number, and the amount owed is not included, it makes the task of analyzing the information that much more difficult.

Given Applicant's appreciation for financial stability and her focused efforts on her delinquent debts, and with her routine monthly \$300 payments to the Bankruptcy Trustee to resolve her delinquent debts, it appears that Applicant's financial problems are finally under control. She appears to have acted prudently and responsibly.⁵⁷ Applicant's actions, under the circumstances confronting her, no longer cast doubt on her current reliability, trustworthiness, or good judgment.⁵⁸

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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):

⁵⁷ "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.

⁵⁸ 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 security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁵⁹

There is some evidence against mitigating Applicant's conduct. Applicant failed to maintain her normal monthly payments to a number of her accounts, and, over a multi-year period, a number of them became delinquent and were placed for collection. She had between \$17,000 and \$18,000 in liabilities discharged under a Chapter 7 bankruptcy in 2006. Nevertheless, several years later, Applicant started having more financial problems. During the period 2010-12, more accounts became delinquent and were placed for collection. Some accounts were charged off.

The mitigating evidence under the whole-person concept is simply more substantial. She has held a secret security clearance since August 2002 without any reported violations. There is no evidence of misuse of information technology systems, mishandling protected information, substance abuse, or criminal conduct. Applicant's financial problems were associated with her divorce from her first husband, her children's medical needs, and her current husband's difficulties with an employer who lowered his income and froze his pension when it filed for bankruptcy protection while reorganizing. The substantial loss of income, along with increased expenses, simply made it impossible to spread what limited funds she had across all of her creditors.

The issues that resulted in the Chapter 7 bankruptcy discharge were separate and apart from those that led to the Chapter 13 bankruptcy filing. Applicant addressed her delinquent accounts in her e-QIPs and interviews. The Chapter 13 repayment plan has allowed the Bankruptcy Trustee to address all of her accounts. As noted above, she makes monthly payments to the Bankruptcy Trustee and the funds are distributed to creditors in accordance with the rules of the U.S. Bankruptcy Code. Some claims have been resolved, and others are in the process of being resolved. Because some of the accounts are reported to credit reporting agencies, and not all the necessary information pertaining to the accounts is included, it is significantly difficult to identify creditors, account numbers, and remaining balances, and nearly impossible to track some accounts with allegations appearing in the SOR. Accordingly, while I have been unable to connect

⁵⁹ 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).

some accounts in credit reports to allegations in the SOR, or to claims in the repayment plan, in fact, some of those accounts for which I found no resolution, may actually be in the process of being resolved.

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 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.⁶⁰

Applicant has demonstrated a meaningful track record of debt reduction and elimination efforts with the assistance of the Chapter 13 Bankruptcy Trustee. Claims are being addressed and routinely resolved. 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 through the Chapter 13 repayment plan pertaining to those remaining debts, or the actual accrual of new delinquent debts, will adversely affect her future eligibility for a security clearance.⁶¹

⁶⁰ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

⁶¹ 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 security clearance. The Government can re-validate Applicant’s financial status at any time through credit reports, investigation, and interrogatories. Approval of a security clearance now does not bar the Government from subsequently revoking it, if warranted. “The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security 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 security clearance. 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).

Overall, the evidence leaves me without questions and doubts as to Applicant's security worthiness. For all of these reasons, I conclude Applicant has mitigated the security 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 amended, 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.ee:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge