



**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. 15-02581

Appearances

For Government: Chris Morin, Esquire, Department Counsel

For Applicant: *Pro se*

08/15/2016

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 December 20, 2012, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On November 24, 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

¹ GE 1 (e-QIP, dated December 20, 2012).

reasons why the DOD adjudicators were unable to make 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 December 4, 2015. In a sworn statement, dated December 16, 2015, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) had issued her a set of interrogatories. She responded to the interrogatories on December 9, 2015.² On February 29, 2016, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on April 22, 2016. A Notice of Hearing was issued on April 29, 2016. I convened the hearing, as scheduled, on May 19, 2016.

During the hearing, 5 Government exhibits (GE 1 through GE 5), 21 Applicant exhibits (AE A through AE U), and 1 administrative exhibit, were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on June 1, 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 V through AE AB, and admitted into evidence without objection. The record closed on June 16, 2016.

Findings of Fact

In her Answer to the SOR, Applicant admitted seven of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.c., 1.f., 1.g., 1.k., and 1.l.) 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 54-year-old employee of a defense contractor. She has been a full-time medical reviewer for a defense contractor since January 2013, as well as a part-time licensed practical nurse, two nights per week, with another employer since November 2012.³ She has another part-time position, one day per week, cleaning condominiums.⁴ 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.⁵ She is a 1979 high school graduate as well as a 1983 practical nursing school graduate.⁶ Applicant was married on three occasions: in January 1982, and divorced in

² GE 2 (Applicant's Answers to Interrogatories, dated December 9, 2015).

³ GE 2 (Personal Subject Interview, dated February 15, 2013), at 2; Tr. at 35, 78-79.

⁴ Tr. at 35, 79-81.

⁵ GE 1, *supra* note 1, at 15; Tr. at 31-32.

⁶ GE 1, *supra* note 1, at 11; Tr. at 31.

June 1982; in July 1986, and divorced in April 2009; and in May 2011.⁷ She has a daughter, born in 1981.⁸

Financial Considerations⁹

There was nothing unusual about Applicant's finances until sometime in mid-2009 when, after a decade of emotional and physical abuse at the hands of her alcoholic second husband, she fled the marital home and obtained a court protection order. Applicant was treated for post-traumatic stress disorder (PTSD). Because she was in constant fear of her husband, she lived briefly with various friends. Her employer posted a photo of her husband at the front desk in the event he turned up at her work place. The eventual divorce resulted in Applicant receiving a substantial monetary settlement. In order to generate enough funds to enable her to contribute to household expenses, and to pay her bills, Applicant took a second job. Her credit score was over 800.¹⁰

Applicant met an individual who was employed where Applicant had her part-time job, and they eventually decided to cohabit. The relationship deteriorated over time when his behavior and eventual unemployment became major issues. Not wishing to continue supporting him, Applicant assisted him in finding an apartment where she cosigned the lease. Three months later, Applicant's mother became very ill, in the early stages of dementia, with lung cancer, and in need of oxygen, and Applicant and her siblings agreed that since Applicant was a nurse, it would be best if Applicant would care for her. The decision would cause Applicant to relocate to another state. Before she left, Applicant was concerned about the cosigned lease because of her friend's increasingly bizarre and paranoid behavior, so she contacted the facility manager to have her name removed from the lease. Applicant's former cohabitant remained in the apartment until September that same year.¹¹

Applicant subsequently discovered that her former cohabitant had stolen one of her checkbooks and forged her name, stealing approximately \$25,000 of her divorce settlement monies. Criminal charges were brought against him, and after Applicant cooperated in his prosecution, Applicant only got back \$10,000 of the stolen money. In the interim, checks bounced and her medical expenses were generated. While residing

⁷ GE 1, *supra* note 1, at 18; Tr. at 32.

⁸ GE 2 (Personal Subject Interview), *supra* note 3, at 2; Tr. at 32.

⁹ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1, *supra* note 1; GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated January 15, 2013); GE 4 (Equifax Credit Report, dated March 2, 2015); GE 5 (Equifax Credit Report, dated September 10, 2015); GE 2 (Personal Subject Interview), *supra* note 3; Answer to the SOR, dated December 16, 2015). More recent information can be found in the exhibits furnished and individually identified.

¹⁰ AE Q (Statement, undated), at 1-2.

¹¹ AE Q, *supra* note 10, at 2; Tr. at 58-59.

with her mother, Applicant assisted her with town taxes, medical expenses, food, and utilities.¹²

Applicant met her current husband at their 30th high school reunion. They eventually married and he joined her at her childhood home. Also residing with them were Applicant's daughter and granddaughter, as well as Applicant's mother. Because of mounting bills associated with Applicant's increased responsibilities, Applicant sought guidance from her 401(k) retirement plan representative. Based on the information given to her, Applicant sought a hardship loan. While she was aware of the penalty or interest to be generated by the early withdrawal, Applicant was not advised that the amount of the loan would be added to her gross income.¹³

Three weeks after Applicant's mother passed away in March 2012, one of Applicant's brothers served Applicant with eviction papers. The eviction caused Applicant, her husband, her daughter, and granddaughter to relocate, and while they searched for a new home and jobs, they were given some financial assistance from her brother-in-law. Applicant obtained her two part-time jobs, but her husband was unable to gain new employment until October 2012. That job only lasted until the end of January 2013. Applicant then took on a third job. She reduced expenses where possible and sought assistance at food banks to get them through a rough year. In October 2014, her husband found another job. At some point, Applicant's husband suffered seizures, and then another significant health issue. In December 2014, Applicant suffered a mini-stroke and was hospitalized.¹⁴

Each of the above incidents and factors either resulted in increased or additional costs to Applicant or to a decrease in the family income. As a result of those varied circumstances, Applicant was unable to routinely maintain her normal monthly payments. Some accounts became delinquent, and they were placed for collection. Her state and federal income taxes were revised upward because of her 401(k) withdrawals.

Applicant contacted various creditors, established repayment arrangements, and made payments. She also met with a financial advisor in an effort to learn better ways of handling her finances.¹⁵ She set up a budget that indicates her monthly income is \$4,220, her total monthly expenses are \$3,974.31, and she has a remainder of \$245.69 available for discretionary saving or spending.¹⁶ It is unclear if Applicant's budget includes the \$300 her daughter gives her for food each month, or if Applicant's husband's salary is included.

¹² AE Q, *supra* note 10, at 2; Answer to the SOR, *supra* note 9, at 2.

¹³ AE Q, *supra* note 10, at 2.

¹⁴ AE Q, *supra* note 10, at 2-3.

¹⁵ AE V (Letter, dated June 8, 2016).

¹⁶ AE Z (Budget, undated).

The SOR identified 12 purportedly continuing delinquent accounts, totaling approximately \$23,173, as reflected by the January 2013 credit report,¹⁷ the March 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.l: These are two "snapshots" of the same state income tax account caused by Applicant's withdrawal of her 401(k) funds. In May 2012, the state department of taxation noted that Applicant had \$4,036 in total payments and refundable credits, leaving a balance of \$3,054.16, for the tax period 2011.²⁰ On May 1, 2013, the same state entity obtained a judgment against Applicant in the amount of \$3,416.²¹ One week later, her anticipated \$339 refund from her 2012 income taxes was applied to the 2011 balance.²² In October 2015, the state department of taxation restated Applicant's income tax liability for the tax period 2011: tax assessed was \$3,034; interest assessed was \$925.81; penalty assessed was \$586.14; payments or credits were \$339; and the current balance due was \$4,206.95.²³ Applicant sought eligibility for entry into the state's Offer in Compromise Program for "financially distressed taxpayers to put overwhelming tax liabilities behind them by paying a reasonable amount in compromise and becoming productive members of the economy."²⁴ She made three separate repayment offers, with the initial one being rejected, and the remaining two not yet resolved.²⁵ She also agreed to an alternative repayment plan under which she makes monthly payments of \$100. As of the hearing date, Applicant contended she had already made two such payments.²⁶ Applicant failed to submit documentation to support her contentions that a repayment agreement had been established or that payments had been made. Nevertheless, in spite of the missing documentation, under the circumstances presented, it appears that the account is in the process of being resolved.

¹⁷ GE 3, *supra* note 9.

¹⁸ GE 4, *supra* note 9.

¹⁹ GE 5, *supra* note 9.

²⁰ AE C (State Tax Bill, dated May 4, 2012).

²¹ GE 4, *supra* note 9, at 3; GE 5, *supra* note 9, at 1.

²² AE W (Account Adjustment Notice – Personal Income Tax, dated May 14, 2013).

²³ AE B (Consolidated Statement of Tax Liabilities, dated October 5, 2015).

²⁴ AE H (Extract of Letter, dated October 7, 2015). The entire letter and associated documents are included in GE 2 (Applicant's Answers to Interrogatories), *supra* note 2.

²⁵ Tr. at 37.

²⁶ Tr. at 38-39; AE B, *supra* note 23 (handwritten note); AE V, *supra* note 15; AE I (Statement, undated), at 1, 3; Answer to the SOR, *supra* note 9, at 1.

SOR ¶ 1.b.: This is a medical account with a high credit of \$216 and a remaining unpaid balance of \$191 (that insurance failed to cover) that was placed for collection following Applicant's treatment for a mini-stroke.²⁷ On May 27, 2016, Applicant contacted the current holder of the account and made the entire payment of \$191.²⁸ The account has been resolved.

SOR ¶ 1.c.: This is a medical account with a remaining unpaid balance of \$76 that was placed for collection following Applicant's treatment for a mini-stroke.²⁹ On May 27, 2016, Applicant contacted the current holder of the account and made the entire payment of \$76, but it appears that the check was never cashed.³⁰ Applicant has had no further contact with the collection agent, but is willing to furnish a substitute check if the first one cannot be found.³¹ The account has either been resolved or is in the process of being so.

SOR ¶ 1.d.: This is an apartment lease that Applicant cosigned for her former boyfriend with an unpaid balance of \$4,650 that was placed for collection.³² Although Applicant had contacted the facility manager to have her name removed from the lease when she moved out of state, and she was under the impression that her request had been honored, she later learned that her name remained on the lease. Applicant claims to be assisting the creditor in their effort to locate her former boyfriend. In the event he cannot be located, she was willing to negotiate a settlement or to start making payments towards at least one-half of the remaining balance. Her offer was rejected.³³ As a lease cosigner, Applicant remains legally responsible for the unpaid balance. The account remains unresolved.

SOR ¶ 1.e.: This is a bank credit card account with a \$300 credit limit that was placed for collection, and charged off in the amount of \$505. The account was sold to a debt purchaser.³⁴ Applicant contacted the debt purchaser and agreed to a repayment settlement. An unspecified amount was paid to the debt purchaser and the account was considered satisfied.³⁵ The account has been resolved.

SOR ¶ 1.f.: This is a bank credit card account with a credit limit of \$775 and a past-due balance of \$1,196 that was charged off in January 2013, and sold to a debt

²⁷ GE 4, *supra* note 9, at 2; GE 5, *supra* note 9, at 2; Answer to the SOR, *supra* note 9, at 1; Tr. at 40-41.

²⁸ AE X (Check, dated May 27, 2016); AE I, *supra* note 26, at 1.

²⁹ GE 5, *supra* note 9, at 2; Answer to the SOR, *supra* note 9, at 1; Tr. at 42.

³⁰ AE X, *supra* note 28; AE I, *supra* note 26, at 1; Tr. at 42-43.

³¹ Tr. at 43.

³² GE 3, *supra* note 9, at 10; GE 5, *supra* note 9, at 2; Answer to the SOR, *supra* note 9, at 2; Tr. at 44-46.

³³ Tr. at 44-46; AE I, *supra* note 26, at 2.

³⁴ GE 3, *supra* note 9, at 7; GE 4, *supra* note 9, at 2; GE 5, *supra* note 9, at 2-3.

³⁵ AE A (Letter, undated); Tr. at 47.

purchaser.³⁶ Applicant contacted the current holder of the account and agreed to a settlement of \$358.80 provided monthly payments were made as agreed. Applicant made her initial payment of \$81.76 in February 2016, and subsequent monthly payments of \$71.76 followed. The final payment was due in June 2016.³⁷ Although Applicant failed to submit documentation regarding payments made after her initial one or a letter from the current collection agent, it appears that the account, if not already resolved, is in the process of being resolved.

SOR ¶ 1.g.: This is a bank credit card account with a \$720 credit limit and high credit of \$988 that was placed for collection, and charged off in the amount of \$660. The account was sold to a debt purchaser in September 2007.³⁸ Applicant contacted the original creditor who referred her to the debt purchaser. The creditor said that Applicant's balance with it was zero, but that she "may still owe something to [the debt purchaser]."³⁹ Although Applicant made numerous telephone calls and wrote two letters to the debt purchaser, she has never received any response to her resolution efforts.⁴⁰ Other than the letter informing her that the account had been sold, Applicant failed to submit any documentation to support the existence of her follow-up efforts to contact the debt purchaser. Considering the age of the debt, it appears that the statute of limitations may have run making the debt generally unenforceable at this late date unless it has been re-aged by Applicant. Furthermore, the debt is not listed in Applicant's most recent credit report under the debt purchaser's name, and the creditor has requested that the debt under its name be deleted by the credit reporting agencies.⁴¹ Nevertheless, it appears that the account has not been resolved.

SOR ¶ 1.h.: This is a telephone land-line account with a past-due balance of \$58 that was placed for collection.⁴² Applicant insisted that she had called the creditor before closing the account in June 2012 and was told that there was no outstanding balance. She was subsequently informed that the account was in collection, but no one was able to tell her what the delinquency was for.⁴³ Applicant claimed to have made the payment, but that payment was apparently lost and the account was transferred to another collection agent. Upon learning of the situation and the new collection agent, in February 2016, Applicant sent that collection agent a check for \$58.83. The payment was returned to Applicant in March 2016 stating that all future payments should be

³⁶ GE 3, *supra* note 9, at 6; GE 4, *supra* note 9, at 2; GE 5, *supra* note 9, at 4.

³⁷ AE J (Letters, various dates); Tr. at 47-48.

³⁸ GE 3, *supra* note 9, at 6; GE 5, *supra* note 9, at 3; AE I, *supra* note 26, at 2; AE K (Letter, dated January 10, 2016).

³⁹ AE K, *supra* note 38.

⁴⁰ AE I, *supra* note 26, at 2; Tr. at 49-51.

⁴¹ AE K, *supra* note 38.

⁴² GE 3, *supra* note 9, at 7.

⁴³ GE 2 (Personal Subject Interview), *supra* note 3, at 3; Answer to the SOR, *supra* note 9, at 4; Tr. at 51.

forwarded to yet another collection agent.⁴⁴ A money order was then sent to the new collection agent in May 2016.⁴⁵ The account has been resolved.

SOR ¶ 1.i.: This is a bank credit card account with a credit limit of \$250, a past-due balance of \$160, and an unpaid balance of \$331 that was placed for collection and charged off in December 2006.⁴⁶ It was subsequently transferred or sold to another collection agent. Applicant contended the account became delinquent when she separated from her second husband, and that when she received monies from a workmen's compensation case in 2008 or 2009, she paid the entire balance.⁴⁷ When she called the creditor or the collection agent, Applicant was informed that the account had been sold and there was no further information available.⁴⁸ Applicant failed to submit any documentation to support the existence of her purported payments or her follow-up efforts to contact the creditor or collection agents. Considering the age of the debt, it appears that the statute of limitations may have run making the debt generally unenforceable at this late date unless it has been re-aged by Applicant. Furthermore, the debt is not listed in Applicant's more recent credit reports under the creditor's name or the collection agents' names. Applicant intends to continue her efforts to locate the current holder of the account. It appears that the account has not been resolved.

SOR ¶ 1.j.: This is a utility account at the apartment for which Applicant served as a cosigner with an unpaid balance of \$426 that was placed for collection.⁴⁹ For the same reasons she gave with respect to her disputed responsibility for the apartment lease, Applicant disputed responsibility for this cosigned utility account. She has made efforts to locate her former boyfriend to persuade the creditor and collection agents to seek payment from him.⁵⁰ As an account cosigner, Applicant remains legally responsible for the unpaid balance. The account remains unresolved.

SOR ¶ 1.k.: This is Applicant's income tax account with the Internal Revenue Service (IRS) which originally covered insufficient income tax payments for the tax year 2011. Although Applicant's withholding for the year was \$16,283, and she made modest irregular payments with and after her filed income tax return, it was subsequently determined that Applicant's actions with respect to her 401(k) required an upward adjustment of her tax for the year. Interest and penalties were added. Adjustments, interest, and penalties were also made for the tax years 2012, 2013, and 2014. An installment agreement was established in July 2014, but it was terminated in March

⁴⁴ AE L (Letter, dated March 4, 2016); AE L (Check, dated February 19, 2016); Tr. at 51-52.

⁴⁵ AE L (Customer's Receipt, dated May 2, 2016); Tr. at 52.

⁴⁶ GE 3, *supra* note 9, at 7.

⁴⁷ Answer to the SOR, *supra* note 9, at 4; Tr. at 52; AE I, *supra* note 26, at 3.

⁴⁸ AE I, *supra* note 26, at 3; Tr. at 52-53.

⁴⁹ GE 3, *supra* note 9, at 10. At some points, Applicant has referred to this account as one for gas, and at other times she has referred to it as an electrical account. The actual nature of the utility was not specified.

⁵⁰ Answer to the SOR, *supra* note 9, at 4; AE I, *supra* note 26, at 3; Tr. at 55.

2015, pending the reestablishment of a new installment agreement in June 2015.⁵¹ It is unclear if Applicant made any payments under those installment agreements. As of July 10, 2015, the total balance due for the four-year tax period was \$7,057.70, including interest and penalties.⁵² The IRS rejected Applicant's proposed monthly payment amount, but indicated it was willing to accept monthly payments of \$85.⁵³ Although Applicant indicated in December 2015 that she had an installment agreement in place under which she was to make monthly payments of \$100,⁵⁴ in fact, that installment agreement was not established until May 2016, with the first such payment, along with a \$120 user fee, due on June 25, 2016.⁵⁵ An income tax overpayment to another state department of revenue, in the amount of \$1,682, was transferred to the IRS in April 2016.⁵⁶ Applicant indicated that modest withholdings were made from one of her part-time incomes, and that she had increased withholding to \$50 per month.⁵⁷ She indicated that her payments would be taken out of her paycheck.⁵⁸ She also stated that, as of the hearing, she had made two monthly \$100 payments under this installment agreement.⁵⁹ Applicant also contended that her IRS balance is now down to a little over \$4,000, as purportedly set forth in AE M.⁶⁰ Applicant is confused and her contention is inaccurate, for AE M does not state any current balance, but AE B, from the state department of taxation does. Applicant failed to submit any documentation to support the existence of her accepted installment agreement or her purported payments to the IRS. In the absence of such documentation, the account is not yet in the process of being resolved.

Applicant dedicated herself to becoming financially stable, and she has resolved at least one non-SOR delinquent account which had an unpaid balance of \$127.⁶¹ She refuses to get or use credit cards, and has not taken a vacation for four years. Instead, she routinely works six days a week at three jobs to generate income to apply to her debts.⁶² In the absence of any additional unidentified delinquencies, it appears that Applicant's financial problems are finally closer to becoming under control.

⁵¹ GE 2 (IRS Letters, various dates), *supra* note 2.

⁵² AE F (IRS Letter, dated July 10, 2015).

⁵³ AE F, *supra* note 52.

⁵⁴ Answer to the SOR, *supra* note 9, at 5.

⁵⁵ AE M (IRS Letter, dated May 12, 2016), at 1; AE AA (Extract of AE M).

⁵⁶ AE N (Notice of Overpayment Applied to Debt, dated April 1, 2016).

⁵⁷ Tr. at 57.

⁵⁸ AE I, *supra* note 26, at 3.

⁵⁹ Tr. at 72.

⁶⁰ Tr. at 72.

⁶¹ AE O (Billing Statement, dated January 7, 2016).

⁶² Tr. at 76-77.

Work Performance, Character References, and Community Service

Applicant was a member of the ladies auxiliary of a veterans organization to assist veterans; a volunteer at a local center for developmentally disabled children; active in the church choir; active in an organization assisting recovering breast cancer survivors; a volunteer assisting women and children in domestic violence situations; a nurse-volunteer at a hospital in the days following the 9/11 terrorist attacks; a volunteer in Louisiana after Hurricane Katrina searching for abandoned pets; and a participant in Honor Flight accompanying military veterans on their visit to Washington, D.C. After 9/11, she attempted to join the U.S. military but was rejected as being too old. Her stepson has served four tours in Afghanistan.⁶³

Applicant's former supervisor noted that Applicant consistently met or surpassed all measurable performance standards, and that she exhibited a "team player mindset, enthusiastic embrace of change, ability to work with minimum supervision, and unwavering commitment to provide a quality product."⁶⁴ Other professional colleagues describe Applicant as respectful, knowledgeable, reliable, hard-working, honest, resourceful, and dedicated, with a willingness to go the extra mile.⁶⁵ 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."⁶⁶

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."⁶⁷ 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."⁶⁸ "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."⁶⁹ Department of Defense contractor

⁶³ AE Q, *supra* note 10, at 4-5.

⁶⁴ AE S (Character Reference, dated December 8, 2015).

⁶⁵ AE G (Character Reference, dated May 15, 2016); AE R (Character Reference, dated May 11, 2016); AE T (Character Reference, dated May 4, 2016); AE U (Character Reference, dated May 1, 2016).

⁶⁶ AE B, *supra* note 41.

⁶⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁶⁸ 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.

⁶⁹ 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.⁷⁰

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."⁷¹ 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.⁷²

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.⁷³ In reaching this

⁷⁰ Regulation ¶ C8.2.1.

⁷¹ "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).

⁷² See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁷³ *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-2009 when she fled the marital home. Thereafter, for a variety of reasons, 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."⁷⁴

⁷⁴ 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 mid-2009 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant was confronted with a number of issues and incidents (PTSD after a decade of emotional and physical abuse, separation, divorce, an unsuccessful follow-up relationship, victim of theft, caring for a chronically ill mother, eviction from her childhood home, income tax penalty for withdrawing 401(k) funds, supporting her daughter and granddaughter, her husband's unemployment, her unemployment, her husband's seizures and other health issues, and Applicant's mini-stroke) 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.

Applicant is somewhat naive regarding financial matters, especially when it comes to her short-sighted decisions to cosign both an apartment lease and a utility service agreement for a former boyfriend. She still fails to understand why she should be held responsible for the entire balance owed for both debts. She is apparently also confused by various debts, sometimes referring to one when, in fact, she should be referring to another. She continues to confuse her state income tax debt with her IRS debt. The majority of Applicant's debt resolution efforts occurred within months after her receipt of the SOR.

But there is also a positive side. Despite years of having to deal with the above issues, sometimes simultaneously, Applicant continued to serve and care for her family and friends. Confronted with escalating financial problems, she obtained one job, then another job, and finally a third job, all with the ultimate goal of resolving her financial issues. Although some of Applicant's delinquent debts, both SOR and non-SOR, have already been resolved, she, nevertheless, continues to work six days a week at her three jobs to eventually facilitate her resolution of her remaining debts. She reduced expenses where possible, met with a financial advisor to learn better ways of handling her finances, set up a budget, contacted her creditors, and established some repayment agreements.

Seven of the alleged debts in the SOR have either been resolved or are in the process of being resolved. The delinquent apartment lease and the utility account have not yet been addressed, although Applicant has held discussions with the creditors. As for the remaining debts, it is unclear what their status might be. Applicant contended

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)).

she took certain actions, but failed to submit documentation to support her contentions. Such documentation would reflect resolution efforts. Nevertheless, it appears that Applicant's financial problems are closer to becoming under control. As noted above, Applicant generally has a monthly remainder of \$245.69 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.⁷⁵

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):

(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.⁷⁶

There is some evidence against mitigating Applicant's conduct. She unwisely cosigned an apartment lease and a utility service agreement for a former boyfriend. She failed to make her monthly payments on a variety of accounts, and they became delinquent, resulting in some being charged off. State and federal income taxes were revised upward, and interest and penalties were added.

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 working six days per week at one full-time job and two part-time jobs to generate funds sufficient to resolve her debts. Her community service as a volunteer is noteworthy. In some ways, Applicant is unique. She has routinely sacrificed herself and her finances to assist others: her mother, her

⁷⁵ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁷⁶ 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).

daughter, her granddaughter, her current husband, and her former boyfriend. She embraced the responsibility of caring for loved ones both as a loving family member and as a professional licensed practical nurse.

Applicant also embraced the paradigm of fiscal responsibility. She prioritized her debts and minimized expenses. Although she was beset by a variety of issues, she made various 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. Repayment plans were established, payments made, and many of her accounts are now either resolved or in the process of being resolved. The absence of documentation to support her contentions with respect to her efforts regarding the other accounts prevents me from concluding that they are also in the process of being resolved. Nevertheless, with the developed evidence, I can conclude that 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 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.⁷⁷

Applicant has demonstrated a fair 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

⁷⁷ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

the actual accrual of new delinquent debts, will adversely affect her future eligibility for a position of public trust.⁷⁸

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.l.: For Applicant

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

⁷⁸ 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).