



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-02737

**Appearances**

For Government: Ross Hyams, Esquire, Department Counsel

For Applicant: *Pro se*

06/06/2017

**Decision**

GALES, Robert Robinson, Administrative Judge:

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

**Statement of the Case**

On March 26, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.<sup>1</sup> On December 5, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (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

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<sup>1</sup> GE 1 (e-QIP, dated March 26, 2014).

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.

Applicant received the SOR on December 14, 2015. On December 18, 2015, she responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on June 1, 2016. The case was assigned to me on August 4, 2016. A Notice of Hearing was issued on August 31, 2016. I convened the hearing as scheduled on September 19, 2016.

During the hearing, 4 Government exhibits (GE) 1 through GE 4, 1 Administrative exhibit, and 16 Applicant exhibits (AE) A through AE P were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on September 27, 2016. The record closed on September 27, 2016.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted a number of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.h., and 1.k. through 1.r.). 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 38-year-old employee of a defense contractor. She has been initially a receptionist and eventually a program control analyst, with the company since October 2015. She is a 1997 high school graduate. She received an associate's degree in 2004 and a bachelor's degree in 2006. She has never served in the U.S. military. Applicant was never granted a security clearance. She was married in 2005, separated in 2007, and divorced in 2009. She has two daughters and three sons.

### **Financial Considerations<sup>2</sup>**

Applicant candidly acknowledged that she had not made some responsible financial decisions during her younger adult years. However, the financial difficulties that brought about an SOR arose in October 2007 when her husband abandoned her and their three children. At the time he left the marital residence, he was earning an annual salary of approximately \$30,000. Applicant was several months pregnant. He ceased all financial support when he left. The financial situation declined even more when, in February 2008, Applicant was terminated from her job. That job generated an annual salary of \$31,200. Her youngest son was born in October 2008. With insufficient funds to continue making her normal monthly payments, accounts became delinquent. She

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<sup>2</sup> General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1, *supra* note 1; GE 2 (Personal Subject Interview, dated April 24, 2014); GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 11, 2014); GE 4 (Equifax Credit Report, dated February 28, 2015); and Applicant's Answer to the SOR, dated December 18, 2015. More recent information can be found in the exhibits furnished and individually identified.

contacted creditors to apprise them of the situation and tried to modify her payments. Because of low income, Applicant qualified for “medical scholarships” with respect to various medical accounts. The situation deteriorated to the point where she lost her residence to foreclosure (the house was worth between \$70,000 and \$80,000 at the time, and she was making mortgage payments of \$800 per month) and her car to repossession (her monthly car payments were \$400). She exhausted her savings and obtained some financial assistance from her family, to the best of their ability, but it was not enough. Applicant and her children relocated to a public housing project in March 2009. That same month, Applicant was divorced. The court noted that Applicant’s husband owed her a child support arrearage of \$8,844, as well as his share of medical bills totaling \$1,382.65. He was ordered to pay her \$872 per month for current child support plus \$100 per month for the arrearage.

Applicant managed to receive unemployment compensation totaling \$250 per week, and eventually, in December 2010, obtained some part-time employment generating \$8.50 per hour. In February 2012, she obtained a position that paid her an hourly salary of \$15. Applicant was unemployed from November 2013 until February 2014. She joined her current employer, and within a two-year period thereafter, her annual salary rose to \$38,480. During 2012 and 2013, well before the SOR was issued, Applicant worked at rehabilitating her student loans, and in 2014, she started readdressing her other debts. At about the same time, Applicant’s teenage daughter gave birth, and Applicant’s finances were, once again, temporarily negatively impacted because her daughter was not mentally or emotionally able to handle the situation. Applicant’s granddaughter resides with her, but her daughter does not reside with them. In May 2016, Applicant purchased a residence financed by the same lender that had previously foreclosed on her earlier residence.

The SOR identified 18 purportedly delinquent debts that had been placed for collection or charged off, as reflected by her 2014 credit report or her 2016 credit report, or her e-QIP, or her Personal Subject Interview. Those debts, totaling approximately \$32,078, 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 refers to a home mortgage for \$77,779 and a second home mortgage for \$2,350 with the same mortgage lender that were foreclosed in 2009, and the property was purchased for \$81,071.46. There was no deficiency. Applicant’s two credit reports reflect zero balances on both mortgages. The accounts have been resolved.

(SOR ¶ 1.b.): This refers to an automobile loan for approximately \$10,077 that was placed for collection and charged off. The lender repossessed the vehicle. Applicant eventually paid the lender \$3,000 from her savings to resolve any delinquency. The lender eventually informed Applicant that the matter had been settled, and that she was released from any and all obligations.<sup>3</sup> The account has been resolved.

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<sup>3</sup> AE A (Letter, dated March 9, 2016).

(SOR ¶ 1.c.): This refers to a bank credit card account with an unpaid balance of \$435.49, of which \$183 was past due in February 2015. The account was brought current by Applicant in June 2015, and there are no other delinquencies.<sup>4</sup> The account has been resolved.

(SOR ¶¶ 1.d. through 1.f., 1.h., and 1.p. through 1.r.): These refer to seven medical accounts with a variety of unpaid balances that were placed for collection by the same hospital in 2008. In 2013, after learning of a scholarship program available to low-income families, Applicant applied for assistance under that program. On April 24, 2014 – 18 months before the SOR was issued – the scholarship was approved, and Applicant's medical bills stemming from 2008, were paid off, leaving a zero balance.<sup>5</sup> The information listed by TransUnion and Experian was eventually deleted from Applicant's credit reports.<sup>6</sup> The accounts have been resolved.

(SOR ¶ 1.g.): This refers to a cable account with an unpaid balance of \$179 that was placed for collection. When Applicant obtained a credit report she became aware of the delinquency, and sometime in 2015, she paid the creditor the remaining balance.<sup>7</sup> The account has been resolved.

(SOR ¶¶ 1.i. and 1.j.): These refer to two additional medical accounts with unpaid balances of \$688 and \$753 that were placed for collection in 2008 and 2009. Applicant contacted the collection agent regarding the accounts but was advised that if she obtained a new credit report, the charges would no longer be listed. Neither account is listed in her September 2016 credit report.<sup>8</sup> The accounts have been resolved.

(SOR ¶ 1.k.): This refers to a cellular phone account with an unpaid balance of \$763 that was placed for collection. The charges were increased because Applicant's daughter lost her phone and under the agreement, it was necessary to purchase another phone for \$250. On March 28, 2014 – over 20 months before the SOR was issued – Applicant paid the collection agent \$457.89, and the remaining balance was listed as zero.<sup>9</sup> The account has been resolved.

(SOR ¶¶ 1.l. through 1.o.): These refer to four student loan accounts with unpaid balances of \$3,371, \$5,038, \$6,404, and \$3,201 that were supposed to be consolidated with Applicant's other student loans, but for unexplained reasons, they were not part of the consolidation. When Applicant entered her difficult financial period, her other consolidated student loans were placed into a deferred status, but these four were not.

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<sup>4</sup> AE B (Payment Activity, dated December 14, 2015).

<sup>5</sup> AE L (Hospital Statements of Services, dated April 24, 2014).

<sup>6</sup> AE C (TransUnion Dispute, dated February 1, 2016); AE D (Experian Dispute, dated February 1, 2016).

<sup>7</sup> AE E (Letter, dated December 18, 2015).

<sup>8</sup> AE F (Experian Credit Report, dated September 12, 2016).

<sup>9</sup> AE G (Final Statement, dated April 23, 2014).

Applicant and the collection agent agreed that if Applicant would make a modest payment each month for ten consecutive months, the accounts would be rehabilitated. She was successful. The current status of her remaining now consolidated student loans in the amount of \$52,330.94, is that they are in good standing in a repayment status. Some of the student loans have already been paid off.<sup>10</sup> The accounts have been resolved.

In September 2016, Applicant submitted a Personal Financial Statement that reported her net monthly income as \$4,056.63 (including \$1,182 in child support); with \$3,000 in monthly expenses; leaving a monthly remainder of \$1,055.94 available for discretionary saving or spending.<sup>11</sup> She has no other delinquent accounts. Applicant has never had financial counseling. Applicant has made substantial progress in resolving her delinquent accounts. It appears that Applicant's financial status has improved significantly, and that her financial problems are finally under control.

### **Work Performance and Character References**

Applicant's administrative officer, who also serves as the executive assistant to the chief executive officer and president of Applicant's employer, has had daily interactions with her. He characterized Applicant as professional and trustworthy, with a positive and upbeat work ethic and attitude. He also noted that she displays the highest level of integrity and competency despite being confronted with stressful situations. He fully supports her application for a security clearance.<sup>12</sup> A former colleague, who has known Applicant for over 20 years, commented that Applicant is always very respectful of privacy, classified information, and rules and regulations. She is always trusted. He noted that Applicant is a proactive member of the community and a loving mother.<sup>13</sup> A friend focused on Applicant's positive contributions to the community and family.<sup>14</sup>

### **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."<sup>15</sup> 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. The President has authorized the Secretary of Defense or his designee to

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<sup>10</sup> AE H (Account Details, dated September 12, 2016).

<sup>11</sup> AE J (Personal Financial Statement, dated September 2016).

<sup>12</sup> AE O (Character Reference, dated April 19, 2016).

<sup>13</sup> AE P (Character Reference, undated).

<sup>14</sup> AE K (Character Reference, undated).

<sup>15</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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.”<sup>16</sup>

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.”<sup>17</sup> 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.<sup>18</sup>

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 than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>19</sup>

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<sup>16</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>17</sup> “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 (4<sup>th</sup> Cir. 1994).

<sup>18</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>19</sup> *Egan*, 484 U.S. at 531.

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.”<sup>20</sup> 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 initial financial problems arose in October 2007 and worsened in February 2008. Accounts became delinquent and were placed for collection. A house was foreclosed, a vehicle was repossessed, and student loans went into default. 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), 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

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<sup>20</sup> See Exec. Or. 10865 § 7.

a good-faith effort to repay overdue creditors or otherwise resolve debts.”<sup>21</sup> In addition, AG ¶ 20(e) may apply where “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.”

AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) apply. Applicant’s financial problems are attributed to a variety of factors: (1) her husband abandoned her and their three children in October 2007; (2) at the time he left the marital residence, Applicant was several months pregnant; (3) Applicant’s husband ceased all financial support, including child support, when he left; (4) Applicant lost her job in February 2008; (5) her youngest child was born in October 2008; and (6) Applicant was unemployed from November 2013 until February 2014. All of those factors were largely beyond Applicant’s control. Applicant did not ignore her debts. Instead, she approached her creditors and tried to establish account rehabilitation arrangements. With insufficient funds to make any substantial impact on her debts, she reduced expenses by relocating her family to low-income public housing, and when she could, she took a variety of minimum-paying part-time positions. Well before the SOR was issued, Applicant paid off the deficiency of her repossessed vehicle; rehabilitated her student loans; zeroed out her delinquent medical accounts with the assistance of a special low-income assistance scholarship program; successfully disputed some accounts; and resolved all other delinquent accounts.

Although Applicant never received financial counseling, she has accounted for all of her accounts, and there are no other delinquent debts... She now receives child support and a decent salary. Her Personal Financial Statement indicated that her net monthly income as \$4,056.63 (including \$1,182 in child support); with \$3,000 in monthly expenses; leaving a monthly remainder of \$1,055.94 available for discretionary saving or spending. Applicant has made substantial progress in resolving her delinquent accounts. It appears that Applicant’s financial status has improved significantly, and that her financial problems are finally under control. She appears to have acted prudently and responsibly. Applicant’s actions, under the circumstances confronting her, no longer cast doubt on her current reliability, trustworthiness, and good judgment.<sup>22</sup>

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<sup>21</sup> 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)).

<sup>22</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).



## 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):

(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.<sup>23</sup>

There is minimal evidence against mitigating Applicant's conduct. Applicant failed to maintain her normal monthly payments to a number of his accounts, and, over multi-year period, a number of accounts became delinquent. A house was foreclosed, a car was repossessed, and student loans went into a default status.

The mitigating evidence under the whole-person concept is more substantial. There is no evidence of misuse of information technology systems or mishandling protected information. Applicant's financial problems were attributed to a variety of combined factors that were all largely beyond Applicant's control. She was a pregnant wife whose husband abandoned her and for a time he did not pay any child support, and she lost her job. Without the financial resources to maintain her accounts in a current status, they became delinquent. However, years before the SOR was issued, Applicant commenced the long road back to financial solvency. She reduced her expenses, relocated the family to low-income public housing, accepted low-salaried part-time jobs, and set up repayment plans. She obtained court-ordered child support. She has resolved all of her formerly delinquent accounts. Once she obtained meaningful employment, Applicant followed through on her promises to resolve her debts.<sup>24</sup> The lender that foreclosed on Applicant's previous residence had sufficient confidence in her financial

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<sup>23</sup> 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).

<sup>24</sup> The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

stability to grant her another mortgage when she purchased her new residence in May 2016.

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.<sup>25</sup>

Applicant has demonstrated an extraordinarily meaningful track record of debt reduction and elimination efforts, and she started to do so years before the SOR was issued. She maintains a budget, and has a substantial monthly remainder available for saving or spending.

Overall, the evidence leaves me without questions or 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 required by section E3.1.25 of Enclosure 3 of the Directive, are:

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

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<sup>25</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

## **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.

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ROBERT ROBINSON GALES  
Administrative Judge