



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



In the matter of:

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ISCR Case No. 15-04382

Applicant for Security Clearance

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

03/23/2017

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges 12 delinquent debts totaling \$15,623. Applicant paid \$7,103 to address the six SOR debts, and the creditor discharged one additional SOR debt. Applicant has a track record of paying her debts when she is able to do so. Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On October 18, 2014, Applicant signed her Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Item 3) On February 12, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (Item 1) Specifically, the

SOR set forth security concerns arising under Guideline F (financial considerations). (Item 1)

On March 10, 2016, Applicant provided a response to the SOR, and she requested a decision without a hearing. (Item 2) On April 25, 2016, Department Counsel completed the File of Relevant Material (FORM). On May 31, 2016, Applicant received the FORM. On June 27, 2016, Applicant responded to the FORM. On March 6, 2017, the case was assigned to me. The case file consisted of seven exhibits. (Items 1-7 and Applicant's FORM response) There were no objection to any exhibits.

### **Findings of Fact<sup>1</sup>**

In Applicant's SOR response, she took responsibility for the debts in SOR ¶¶ 1.a through 1.i. (Item 2) She also provided extenuating and mitigating information. (Item 2) Applicant's admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is a 38-year-old financial analyst who is being sponsored for employment with a DOD contractor.<sup>2</sup> (Item 4) In 2012, she received a bachelor's degree in accounting and a certification in advanced accounting. She has never served in the U.S. Armed Forces. In 2004, she married. Her children were born in 1998 and 2010. There is no evidence that she violated security rules, committed any crimes, abused alcohol, or used illegal drugs. There is no evidence of employer performance evaluations.

### **Financial Considerations**

Applicant's history of delinquent debt is documented in her credit reports, SCA, Office of Personnel Management (OPM) personal subject interview (PSI), SOR response, and FORM response. The status of her 12 delinquent SOR debts is as follows.

SOR ¶ 1.a alleges a bank debt with a judgment filed in 2014 for \$3,818. (Item 1) In March, May, and June 2014, Applicant made \$86 payments, and she said she made one additional payment. (FORM response)

SOR ¶¶ 1.b, 1.c, and 1.e allege three delinquent debts owed to the same credit union for \$247, \$2,142, and \$1,518. (Item 1) From May 2015 to June 2016, Applicant made 14 payments totaling \$1,270 to address the three debts. (FORM response)

SOR ¶¶ 1.d and 1.f allege two delinquent debts owed to a bank for \$1,015 and \$1,202. (Item 1) From December 2014 to January 2016, she made 14 payments to the

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<sup>1</sup> Some details have been excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

<sup>2</sup> Unless stated otherwise, the source of the information in this paragraph is Applicant's October 18, 2014 Electronic Questionnaire for National Security Positions (e-QIP) (SF 86) or security clearance application (SCA). (Item 3)

creditor totaling \$5,503. (FORM response) She said the debt in SOR ¶ 1.d is currently delinquent and her payments were applied to the debt in SOR ¶ 1.f. (FORM response)

SOR ¶¶ 1.g and 1.i allege two medical debts for \$25 and \$71. Applicant said she planned to pay the debt in SOR ¶ 1.g in March 2016, and the debt in SOR ¶ 1.i is delinquent. (FORM response)

SOR ¶¶ 1.h and 1.j allege two telecommunications debts originating from the same telecommunications company placed for collection for \$1,402 and \$2,082. (Item 1) Applicant said these two debts are delinquent. (FORM response)

SOR ¶ 1.k alleges a bank debt placed for collection for \$1,872. (Item 1) In January 2015, the creditor wrote that the debt was discharged, and the creditor issued an Internal Revenue Service (IRS) Form 1099C for tax year 2014. (FORM response)

SOR ¶ 1.l alleges a store debt placed for collection for \$229. (Item 1) Applicant said this debt is delinquent. (FORM response)

In 2010, Applicant was fully employed and receiving \$60,085 in annual income.<sup>3</sup> She was unemployed from 2010 to October 2014. For the first two years of her unemployment, she received monthly unemployment compensation of \$1,360. Her husband lost his business and became unemployed. In 2012, her son was diagnosed with autism. Applicant's mother lived with her, and in 2012, her mother was diagnosed with mental illness, which prevented her mother from working. While she was unemployed, her family received Medicaid and food stamps from the Government.<sup>4</sup> From May 2013 to October 2014, she worked as an independent contractor-hair stylist. (Item 3) From October 2014 to September 2015, Applicant received \$41,179 from her employer. (FORM response) On February 11, 2016, Applicant's employer discharged her citing the loss of her security clearance. (FORM response) Applicant resumed making payments to two SOR creditors when she became employed in October 2014. When she obtains employment, she promised that she would resume payments to her SOR creditors until her delinquent debts are resolved. Her credit reports show many debts with zero balance owed.

In sum, Applicant paid \$7,103 to address the six SOR debts in ¶¶ 1.a through 1.f. The creditor for the debt in SOR ¶ 1.k discharged the debt, and the creditor issued an IRS Form 1099C. She began addressing her delinquent debts in December 2014 shortly after becoming employed and well before the SOR was issued in February 2016.

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<sup>3</sup> Unless a different source is cited, the basis for the facts in this paragraph and the next paragraph is Applicant's SOR response. (Item 2)

<sup>4</sup> When Applicant was unemployed, her income was below the federal poverty level of \$24,250 for a family of four, and she was eligible for various federal poverty programs, including Medicaid. See Health and Human Services website, <https://aspe.hhs.gov/poverty-guidelines>.

## 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.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. 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.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the

facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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 Appeal Board explained the scope and rationale for the financial considerations security concern as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted).

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in her credit reports, OPM PSI, SOR response, and FORM response. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago,<sup>5</sup> 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;

(b) 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;

(c) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>6</sup> and

(e) 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the

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<sup>5</sup> A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. February 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

<sup>6</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) 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)).

applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Two Appeal Board decisions illustrate the analysis for applying AG ¶¶ 20(a) and 20(b). In ISCR Case No. 09-08533, the applicant had \$41,000 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. That applicant filed for bankruptcy the same month the Administrative Judge issued her decision. *Id.* at 1-2. The applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his child support payments to her. The Appeal Board determined that AG ¶ 20(a) was “clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment)” even though that applicant’s debts were unresolved at the time the Administrative Judge’s decision was issued. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence<sup>7</sup> of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4.

Similarly, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an applicant was sporadically unemployed and lacked the ability to pay her creditors. The Appeal Board noted “it will be a long time at best before he has paid” all of his creditors. The applicant was living on unemployment compensation at the time of his hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took “reasonable actions to effectuate that plan.” *Id.* The Appeal Board remanded the administrative judge’s decision because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the administrative

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<sup>7</sup> Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government.

judge did “not explain[] what he believes that applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by applicant was not ‘responsible’ in light of his limited circumstances.” *Id.*

Application of AG ¶ 20(c) is warranted. Applicant’s financial situation was damaged by years of underemployment and unemployment. Applicant paid \$7,103 to address the six SOR debts in ¶¶ 1.a through 1.f when she was employed and before the SOR was issued. The creditor for the debt in SOR ¶ 1.k discharged the debt and issued an IRS Form 1099C. She acted responsibly by paying as many debts as possible and establishing payment plans for several debts. Although there is limited evidence of record that she established and maintained contact with her creditors,<sup>8</sup> her financial problem is being resolved or is under control.

AG ¶ 20(d) is partially applicable. Applicant established payment plans to address six SOR debts. According to her credit reports, she admitted responsibility for and took reasonable and responsible actions to resolve additional debts, establishing some good faith.<sup>9</sup> AG ¶ 20(e) is not applicable. She did not provide documentation establishing a reasonable dispute for any of her SOR debts.

Based on Applicant’s credible and sincere promise to pay her debts and her track record of paying her debts, future new delinquent debt “is unlikely to recur and does not cast doubt on [Applicant’s] current reliability, trustworthiness, or good judgment,” and “there are clear indications that the problem is being resolved or is under control.” Her payments of her debts showed good faith. I am confident that Applicant will conscientiously endeavor to maintain her financial responsibility. Her efforts are sufficient to mitigate financial considerations security concerns.

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<sup>8</sup> “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.

<sup>9</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) 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)).



## 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is a 38-year-old financial analyst who is being sponsored for a security clearance and employment with a DOD contractor. In 2012, she received a bachelor's degree in accounting and a certification in advanced accounting. In 2004, she married. Her children were born in 1998 and 2010. There is no evidence that she violated security rules, committed any crimes, abused alcohol, or used illegal drugs.

Applicant's SOR alleges 12 delinquent debts totaling \$15,623. Applicant paid \$7,103 to address six SOR debts, and the creditor discharged one additional SOR debt. She assures she intends to pay her debts. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . 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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his 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 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.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has established a “meaningful track record” of debt payment as indicated in her credit reports, SOR response, and FORM response. She understands what she needs to do to establish and maintain her financial responsibility. She took reasonable actions under her particular financial circumstances to address her delinquent debts. I am confident she will continue to maintain her financial responsibility.<sup>10</sup>

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations security concerns are mitigated.

### **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
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Subparagraphs 1.a through 1.l:	For Applicant
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### **Conclusion**

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

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MARK HARVEY  
Administrative Judge

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<sup>10</sup> Of course, the Government may re-validate Applicant’s financial status at any time through credit reports, investigation, and interrogatories. Approval of access to classified information 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.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). An administrative judge does not have “authority to grant an interim, conditional, or probationary clearance.” 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. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, “The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have access to classified information while she works on her financial problems.”). This footnote does not imply that this Applicant’s security clearance is conditional.