



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



In the matter of:

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Applicant for Public Trust Position

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ADP Case No. 15-05955

**Appearances**

For Government: Chris Morin, Esquire, Department Counsel

For Applicant: *Pro se*

02/13/2017

**Decision**

GALES, Robert Robinson, Administrative Judge:

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

**Statement of the Case**

On February 17, 2015, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP).<sup>1</sup> On February 28, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, pursuant to DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended and modified (Regulation); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the DOD on September 1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged trustworthiness concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD

<sup>1</sup> GE 1 (e-QIP, dated February 17, 2015).

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 March 15, 2016. In a sworn statement, dated April 1, 2016, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On June 20, 2016, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on October 26, 2016. A Notice of Hearing was issued on November 7, 2016. I convened the hearing, as scheduled, on December 7, 2016.

During the hearing, three Government exhibits (GE 1 through GE 3) and one administrative exhibit were admitted into evidence without objection. Applicant did not offer any exhibits. Applicant testified. The transcript (Tr.) was received on December 15, 2016. I kept the record open to enable Applicant to supplement it. Applicant chose not to take advantage of that opportunity. The record closed on January 11, 2017.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted all but three of the factual allegations pertaining to financial considerations (§ 1.a. through 1.d., 1.g., and 1.h.) of the SOR. She denied the remaining allegations. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 26-year-old employee of a defense contractor. She has been a customer service advocate for her employer since May 2015.<sup>2</sup> She previously held a number of simultaneous part-time sales associate positions with various retailers from October 2014 until May 2015.<sup>3</sup> She is seeking to obtain her eligibility for occupying a public trust position to support a contract with the DOD. She is a 2009 high school graduate with two years of college credits but no degree.<sup>4</sup> She has never served in the U.S. military.<sup>5</sup> Applicant has never been married.<sup>6</sup>

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<sup>2</sup> Tr. at 20.

<sup>3</sup> Tr. at 19-20, 39-40; GE 1, *supra* note 1, at 11-14.

<sup>4</sup> GE 1, *supra* note 1, at 10-11; Tr. at 17-18.

<sup>5</sup> GE 1, *supra* note 1, at 18; Tr. at 20-21.

<sup>6</sup> GE 1, *supra* note 1, at 20; Tr. at 20.

## Financial Considerations<sup>7</sup>

It is unclear when or why Applicant first started experiencing financial difficulties. She actually offered several general explanations for various problems she had experienced over time. She claimed that she voluntarily resigned from her position as a bank teller in 2013 to care for her paralyzed stroke-victim grandmother, and that she remained unemployed for six months before acquiring part-time jobs in October 2014.<sup>8</sup> An alternate scenario was that she worked at the bank from February 2012 until May 2014 when she was terminated by mutual agreement following charges or allegations of misconduct.<sup>9</sup> Applicant also offered a slight modification of the alternate scenario when she referred to her departure from the bank as a lay-off due to an economic downturn.<sup>10</sup> In addition, Applicant noted that she has a physical condition that consistently causes her to lose about one week of work each month, a period during which she receives no salary.<sup>11</sup> Another explanation referred to her parents' divorce and having to financially assist her mother when her father "took everything" and her mother wasn't working.<sup>12</sup> The most recent explanation was that Applicant's uncles evicted her from her grandmother's residence because they wanted to place her grandmother in a nursing home and Applicant's clothing and documents were thrown everywhere.<sup>13</sup>

The SOR identified nine purportedly continuing delinquent accounts, totaling approximately \$16,972, as reflected by the March 2015 credit report<sup>14</sup> and the June 2016 credit report.<sup>15</sup> Applicant acknowledged all but one of the accounts listed in the SOR, but stated that she would pay that one account, about which she was previously unaware, on April 29, 2016. Applicant contended that she had set up a repayment plan for two accounts. She claimed she was no longer responsible for two accounts and that they are no longer on her credit report. Although Applicant stated she would submit requested documentation to support her contentions regarding contacts made with creditors or credit repair firms, settlement offers, repayment plans, or the existence of any payments made to her creditors, she failed to do so. Those debts and their respective current status,

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<sup>7</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 (Combined Experian, TransUnion, and Equifax Credit Report, dated March 21, 2015); GE 3 (Equifax Credit Report, dated June 20, 2016); Applicant's Answer to the SOR, dated April 29, 2016.

<sup>8</sup> Tr. at 18-19.

<sup>9</sup> GE 1, *supra* note 1, at 15-16.

<sup>10</sup> Tr. at 22.

<sup>11</sup> Tr. at 34-35.

<sup>12</sup> Tr. at 27.

<sup>13</sup> Tr. at 44-45.

<sup>14</sup> GE 2, *supra* note 7.

<sup>15</sup> GE 3, *supra* note 7.

according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below:

SOR ¶ 1.a.: This is a personal loan with a past-due balance of \$4,565 that was placed for collection and charged off in July 2014.<sup>16</sup> It was subsequently reported that the charged-off amount was \$4,590.<sup>17</sup> Applicant secured the loan to financially assist her mother, but she was unable to make the \$196 monthly payments.<sup>18</sup> Applicant contended she contacted the creditor in 2015 in an effort to resolve the account, but the creditor wanted a one-time payment of \$1,500 to settle the account. Applicant stated she did not have that amount and negotiations ceased. She has made no further resolution efforts.<sup>19</sup> The account remains unresolved.

SOR ¶ 1.b.: This is a personal loan with an unpaid balance of \$833 and a past-due balance of \$724 that was placed for collection and \$833 was charged off.<sup>20</sup> It was subsequently reported that the charged-off amount was \$724.<sup>21</sup> Applicant secured the loan to financially assist her mother with the rent and to make Applicant's car payment, but she was unable to make the \$102 monthly payments.<sup>22</sup> Applicant contended she contacted the creditor in an effort to resolve the account, and she advised the creditor that she would start making payments "soon."<sup>23</sup> She has made no further resolution efforts.<sup>24</sup> The account remains unresolved.

SOR ¶ 1.c.: This is a personal loan with an unpaid balance of \$647 and a past-due balance of \$682 that was placed for collection and \$647 was charged off.<sup>25</sup> Applicant secured the loan to make car payments, but she was unable to make the \$96 monthly payments.<sup>26</sup> Applicant claimed she had made a monthly cash payment into a lock box, but the creditor refused to acknowledge that payment. She never reported the incident to the authorities, nor has she made any further resolution efforts.<sup>27</sup> The account remains unresolved.

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<sup>16</sup> GE 2, *supra* note 7, at 5.

<sup>17</sup> GE 3, *supra* note 7, at 4.

<sup>18</sup> Tr. at 21-22; GE 1, *supra* note 1, at 31-32.

<sup>19</sup> Tr. at 22-23.

<sup>20</sup> GE 2, *supra* note 7, at 6.

<sup>21</sup> GE 3, *supra* note 7, at 5.

<sup>22</sup> Applicant's Answer to the SOR, *supra* note 7; Tr. at 23.

<sup>23</sup> Applicant's Answer to the SOR, *supra* note 7.

<sup>24</sup> Tr. at 24.

<sup>25</sup> GE 2, *supra* note 7, at 6.

<sup>26</sup> Tr. at 24.

<sup>27</sup> Tr. at 24-26; Applicant's Answer to the SOR, *supra* note 7.

SOR ¶ 1.d.: This is a cable account with an unpaid and past-due balance of \$299 that was placed for collection and charged off.<sup>28</sup> Applicant's mother failed to make the payment, and Applicant was unable to make the \$75 monthly payments.<sup>29</sup> Applicant contended she contacted the creditor in February 2016 in an effort to resolve the account. In her Answer to the SOR, Applicant claimed the settlement was for \$175, but during her hearing, she said it was for \$150. Because she did not have the funds at the time, Applicant indicated she was saving up the funds to make her payment.<sup>30</sup> She offered no evidence of any payments. The account remains unresolved.

SOR ¶ 1.e.: This is a medical account with an unpaid and past-due balance of \$16 that was placed for collection.<sup>31</sup> Applicant stated she was unaware of the account, but indicated that she would make a \$16 payment on April 29, 2016.<sup>32</sup> Applicant contended she made the payment by money-order,<sup>33</sup> but she failed to submit any documentation to support her contention. In the absence of such documentation, the account remains unresolved.

SOR ¶ 1.f.: This is a bank credit card account with a past-due balance of \$1,058 that was placed for collection and sold to a debt purchaser.<sup>34</sup> Applicant contended that her father had access to her social security number, and that he opened the account in her name without her knowledge or authorization. Because of their relationship, she did not report the activity to the authorities.<sup>35</sup> In her e-QIP, Applicant indicated an intent to pay off the account.<sup>36</sup> Applicant changed her plans, and she subsequently claimed that she disputed the account with the creditor and a credit reporting agency as unauthorized.<sup>37</sup> She claimed her disputes were successful and the account was removed from her credit report,<sup>38</sup> but she failed to submit any documentation to support her contention. In the absence of such documentation, the account remains unresolved.

SOR ¶¶ 1.g. and 1.h.: There are two student loans with unpaid balances of \$6,089 and \$2,990 that were past due and placed for collection when they fell into a default

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<sup>28</sup> GE 2, *supra* note 7, at 6; GE 3, *supra* note 7, at 5.

<sup>29</sup> Tr. at 27.

<sup>30</sup> Applicant's Answer to the SOR, *supra* note 7; Tr. at 27-28.

<sup>31</sup> GE 2, *supra* note 7, at 7; GE 3, *supra* note 7, at 5.

<sup>32</sup> Applicant's Answer to the SOR, *supra* note 7; Tr. at 28.

<sup>33</sup> Tr. at 28, 44.

<sup>34</sup> GE 2, *supra* note 7, at 7.

<sup>35</sup> Applicant's Answer to the SOR, *supra* note 7; Tr. at 29.

<sup>36</sup> GE 1, *supra* note 1, at 29.

<sup>37</sup> Applicant's Answer to the SOR, *supra* note 7; Tr. at 29.

<sup>38</sup> Applicant's Answer to the SOR, *supra* note 7; Tr. at 29.

status.<sup>39</sup> Applicant contended that she was in the hardship program and consolidated the two loans, and that she has been making \$10 monthly payments to remove the loans from the default status.<sup>40</sup> Applicant claims that the consolidated loans are now rehabilitated,<sup>41</sup> but she failed to submit any documentation to support her contentions or claims. In the absence of such documentation, the accounts remain unresolved.

SOR ¶ 1.i.: This is an automobile insurance account with an unpaid balance of \$475 that was placed for collection.<sup>42</sup> Applicant claimed that the insurance company raised her rates because of a purported accident, but she denied ever having the accident. Nevertheless, she continued to pay her normal premium rather than the increased premium and she eventually fell behind in her payments.<sup>43</sup> Applicant contended that she disputed the debt with a credit reporting agency and that the debt was removed from her credit report.<sup>44</sup> Applicant failed to submit any documentation to support her contention. In the absence of such documentation, the account remains unresolved.

Applicant maintains a very rudimentary style of budget by merely using her I-phone to maintain a journal of all of her bills.<sup>45</sup> Although she indicated that she would submit a personal financial statement reflecting her monthly net income, monthly expenses, and monthly remainder available for discretionary saving or spending, she failed to do so. She acknowledged that she has no money in her checking or savings accounts, and indicated that she pays her bills in cash.<sup>46</sup> She stated that her monthly contribution for living arrangements with her father, including food and other unspecified needs, was approximately \$300 per pay period.<sup>47</sup> Her car is owned outright, but it is unusable because the engine needs to be replaced.<sup>48</sup> Applicant claims to have “a few dollars left” each month, but offered no specific amount because, since December 2015, she has been missing work because of her health issues.<sup>49</sup>

Applicant has never received financial counseling.<sup>50</sup> In September 2016, she purportedly established a professional relationship with a credit repair company to dispute

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<sup>39</sup> GE 2, *supra* note 7, at 7; GE 1, *supra* note 1, at 30.

<sup>40</sup> Applicant's Answer to the SOR, *supra* note 7; Tr. at 30-31.

<sup>41</sup> Applicant's Answer to the SOR, *supra* note 7; Tr. at 31.

<sup>42</sup> GE 2, *supra* note 7, at 9.

<sup>43</sup> Tr. at 31.

<sup>44</sup> Applicant's Answer to the SOR, *supra* note 7; Tr. at 31-32.

<sup>45</sup> Tr. at 34.

<sup>46</sup> Tr. at 32.

<sup>47</sup> Tr. at 33.

<sup>48</sup> Tr. at 33.

<sup>49</sup> Tr. at 34-35.

<sup>50</sup> Tr. at 46.

her delinquent accounts and assist her in “cleaning up [her] credit.”<sup>51</sup> She claims that she pays the company \$24.99 per month as a service fee, but is unaware of any other monthly payments.<sup>52</sup> Because of the absence of documentary evidence to support Applicant’s contentions and claims, it appears that Applicant’s financial problems are not any closer to becoming under control.

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a [position of public trust].”<sup>53</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. Positions designated as ADP-I and ADP-II are classified as “sensitive positions.”<sup>54</sup> “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.”<sup>55</sup> Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.<sup>56</sup>

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.

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<sup>51</sup> Tr. at 36-37, 40-42.

<sup>52</sup> Tr. at 42-43.

<sup>53</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>54</sup> 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.

<sup>55</sup> Regulation ¶ C6.1.1.1.

<sup>56</sup> Regulation ¶ C8.2.1.

In the decision-making process, facts must be established by “substantial evidence.”<sup>57</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>58</sup>

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.<sup>59</sup> In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

### **Guideline F, Financial Considerations**

The trustworthiness concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise trustworthiness concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially

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<sup>57</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>58</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>59</sup> *Egan*, 484 U.S. at 531.



disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise trustworthiness concerns. At some point in 2013 or 2014, Applicant had insufficient money to maintain all of her monthly payments. Various accounts became delinquent and were placed for collection or charged off. Two student loans went into a default status. 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.”<sup>60</sup> In addition, AG ¶ 20(e) may apply if “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the basis of the dispute or provides evidence of actions to resolve the issue.”

AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) do not apply. The nature, frequency, and recency of Applicant’s continuing financial difficulties make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” While Applicant generalized certain family issues as contributing to her financial problems, she never specifically attributed any particular factors to her financial situation. Because of the variety of explanations pertaining to Applicant’s departure from her bank employment, it remains unclear if such action was voluntary on her part or involuntary due to a layoff or termination following charges or allegations of misconduct, neither of which was beyond Applicant’s control. Furthermore, Applicant offered no documentary evidence of a good-faith effort to resolve any of her accounts. Over the years, she failed to pay or resolve an account with a balance as low as \$16. As for her disputes, Applicant merely “disputed” certain accounts,

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<sup>60</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)).

but she failed to articulate a reasonable basis to dispute the legitimacy of those debts, and failed to submit documentation reflecting the disputes, reasons for the disputes, or the results of the disputes.

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

In this instance, there are purported actions taken, but there is no documentation to support the existence of any of Applicant's claimed actions or payments. She failed to submit any proposed repayment plan related to her accounts with a repayment schedule, or repayment arrangements supposedly entered into with various creditors, or proof of past payments. Applicant has not acted responsibly by failing to timely address her delinquent accounts.<sup>61</sup> Applicant's relative inaction under the circumstances confronting her cast substantial doubt on her current reliability, trustworthiness, and good judgment.<sup>62</sup>

There is no evidence to indicate that Applicant ever received financial counseling. Based on the information furnished, it is unclear if Applicant has any meaningful funds remaining at the end of each month for discretionary use or savings. She was reluctant to reveal any specifics regarding her current financial situation. There is no evidence to reflect that Applicant's financial problems are under control. To the contrary, the overwhelming evidence leads to the conclusion that Applicant's financial problems are not under control.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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<sup>61</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>62</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>63</sup>

There is some evidence in favor of mitigating Applicant's conduct. There is no evidence of misuse of information technology systems, mishandling protected information, or substance abuse. She is a loving, caring individual who has seemingly placed the interests and welfare of her grandmother and parents ahead of her own interests. Applicant has worked with the same employer since May 2015.

The disqualifying evidence is more substantial and compelling. Applicant acknowledged her failure to maintain her accounts in a current status. She contended she settled and paid off some accounts, but she failed to submit any documentation such as receipts, cancelled checks, account records, etc., to support her contentions. The inconsistency of her explanations regarding her purported actions and activities pertaining to various accounts, coupled with her failure to submit any of the documentation to support her contentions, leads me to conclude that Applicant has failed to take any positive action to resolve any of the SOR accounts. Although she was urged to submit documentation to support any of her contentions, she failed to submit such materials. She has not received any financial counseling. There are clear indications that Applicant's financial problems are not 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

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<sup>63</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).

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>64</sup>

Applicant has demonstrated a poor track record of debt reduction and elimination efforts. Despite exhortations to submit documentation, by her failure to follow through, she seemed somewhat disinterested in doing so. Applicant offered too many inconsistencies regarding her current financial situation.

Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a position of public trust. For all of these reasons, I conclude Applicant has failed to mitigate 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:                      AGAINST APPLICANT

Subparagraphs 1.a. through 1.i.:              Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not 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 denied.

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ROBERT ROBINSON GALES  
Administrative Judge

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<sup>64</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).