



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-08689
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

11/14/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant lost her home to foreclosure because she was unemployed for four years after an accident at work in June 2008. Additional medical bills from an illness in late 2013 also compromised her finances. She disputes all but \$370 of some \$4,547 in collection debt on her credit record, although she presented no documentation to disprove her liability. She did not file her federal and state income tax returns for tax years 2014 and 2015 until April 2017, but she intends to comply with her tax filing obligations in the future. She also intends to address the collection debt on her record with the help of an attorney. Clearance is granted.

Statement of the Case

On November 7, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for her. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

Program (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On December 28, 2016, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 11, 2017, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 19, 2017, I scheduled a hearing for May 25, 2017.

While this case was pending final adjudication, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017.¹

On May 18, 2017, I provided Applicant with an updated version of the Directive incorporating the new AG. I advised her that I would be considering the AG in her case, given that a decision about her security clearance eligibility would not be forthcoming before June 8, 2017.

I convened the hearing as scheduled on May 25, 2017. Four Government exhibits (GEs 1-4) were admitted in evidence without objection. A January 23, 2017 letter forwarding discovery of the Government's exhibits to Applicant was marked as a hearing exhibit (HE1) but not entered into evidence. Applicant testified, as reflected in a transcript (Tr.) received on June 5, 2017, and submitted a binder of documents, which were marked collectively as Applicant exhibit (AE A) and admitted into the record without objection.

I held the record open for post-hearing submissions from Applicant. On May 28, 2017, Applicant submitted an email and attachments showing her monthly budgets for June and July 2017 and some "irregular" expenses (AE B) and a record of her checking and savings transactions from May 2017 (AE C). On May 30, 2017, the Government indicated that it had no objection, and I accepted AEs B and C into evidence. On June 14, 2017, Applicant submitted final comments for the record (AE D), which were admitted without any objection. The record closed on June 15, 2017, when the Government responded to AE D.

Findings of Fact

The SOR alleges under Guideline F that Applicant failed to timely file her federal and state income tax returns for 2014 (SOR ¶¶ 1.a. 1.b) and that her mortgage loan was foreclosed in 2011 (SOR ¶ 1.c). Additionally, as of November 7, 2016, she allegedly owed

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

\$4,547 in collection debt on 14 accounts (SOR ¶¶ 1.d-1.q). When she responded to the SOR, Applicant admitted her failure to timely file her 2014 tax returns, the foreclosure of her mortgage loan, and one collection debt of \$250 (SOR ¶ 1.h). She denied the remaining debts.

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 38-year-old high school graduate who has worked as an analyst for a defense contractor since May 2015. She earned some college credits between September 1998 and 2000 but has yet to earn a college degree. Applicant has never married and has no children. She seeks her first DOD security clearance. (GE 1; Tr. 35, 41.)

Applicant was employed as an executive director with a staffing services company from July 2005 to June 2008 and full time as a server at a club from April 2008 to June 2008. She was severely injured while working as a server in June 2008. She was placed in a no-work status pending several surgeries and physical therapy until late May 2012, when she was medically cleared for part-time work. Before she was injured, her annual income was approximately \$42,000 to \$45,000. She received a total of \$21,681 in temporary total disability compensation over the next 204 weeks, which was unevenly disbursed. For some 14 weeks, she received no payments. Applicant asserts that temporary disability payments could be withheld for no reason by her then state of residence. (GEs 1, 4; AE A; Tr. 25-26, 36-38.) Applicant pursued a legal claim for \$66,507 (\$21,556 for total permanent disability and \$44,451 in unpaid temporary total disability compensation). (AE A.) She eventually reached a settlement for \$55,000 on April 21, 2015. (Tr. 38-39, 74-75.)

During her lengthy unemployment, Applicant relied on savings and financial assistance from friends and her church. (GE 1; Tr. 26.) She also liquidated her 401(k) assets. (Tr. 27.) She applied under the Home Affordable Modification Program (HAMP) to modify her mortgage loan obtained for \$100,000 in 2005. Applicant made her modified payments on time during the application process, but had to resubmit her documentation several times due to no fault of her own. After she had been advised that her modification was approved, she received notice of mortgage foreclosure. Her home loan was foreclosed in December 2010 (SOR ¶ 1.c). The deficiency balance on her home loan was paid from her mortgage insurance. (GEs 1-2; AE A; Tr. 27-28, 52-53.) In August 2013, Applicant received \$500 in settlement because of the deficient foreclosure process by her lender. (AE A; Tr. 27-28.) She received a second settlement in October 2013 from the National Mortgage Settlement fund, which was apparently related to the handling of her application for modification. (AEs A, D.)

Seven medical debts totaling \$3,769 incurred between December 2010 and March 2011 were assigned for collection in 2011 (SOR ¶¶ 1.d-1.g, 1.i-1.k). A \$28 debt from April 2010 was placed for collection in August 2010 (SOR ¶ 1.q). (GE 2.)

In June 2012, Applicant resumed working, taking a part-time personal assistant position for an investment group. After she was medically cleared for full-time work in

August 2013, Applicant began full-time employment working with a budgeting and scheduling tool for a new employer in September 2013. (GE 1; Tr. 80.) She became seriously ill in December 2013 and met her medical insurance deductible almost immediately. (Tr. 77.) By May 2017, she had had more than six medically necessary surgeries or procedures. (AE D.)

In April 2015, Applicant received her disability settlement of \$55,000, from which she paid her attorney's fees and expenses of \$12,789 and about \$3,500 in personal loans. She made a \$16,322 payment in May 2015 to satisfy the balance of a car loan obtained in December 2013 for \$21,277. She purchased a computer for her college studies, which she resumed early in 2016. She deposited the remainder in her savings account for any emergencies. (GE 3; Tr. 39-40, 74-75.)

In May 2015, Applicant resigned and relocated for her present employment with a defense contractor. While her new job brought a substantial increase in her annual income from her previous \$46,000 to her current \$68,952, the cost of living in her new locale is higher. (GE 1; Tr. 40-41.)

On August 25, 2015, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). In response to an inquiry concerning any failure to file or pay federal, state, or other taxes in the past seven years, Applicant indicated that she had failed to file returns and pay taxes for 2014 (SOR ¶¶ 1.a, 1.b) because she was dealing with health issues at the beginning of 2014 and forgot to request an extension before moving in May 2015.² She indicated that she planned to meet with her accountant when she visited her previous locale in September 2015 and would file her returns and pay any taxes owed at that time. With regard to any delinquency involving enforcement in the last seven years, Applicant disclosed the difficulties paying her mortgage loan because of her injury and subsequent lengthy unemployment, and her efforts to obtain a modification before she surrendered her home without issue. In an optional comment, she indicated that she had only \$400 a month to cover her living expenses when she was in a non-pay status and that "all areas of [her] financial life were negatively affected." While she did not recall all of the accounts involved, she had disputed a telecommunications debt (SOR ¶ 1.p) and a utility debt (SOR ¶ 1.g) in that the creditors had billed her for services after she had moved from the home she lost to foreclosure. (GE 1.)

A check of Applicant's credit on September 1, 2015, revealed that Applicant had settled some credit card accounts that had been delinquent. She was making \$95 monthly payments on a student loan balance of \$7,559, and of \$37 and \$31 per month on federal student loans with balances of \$2,731 and \$2,328. She had opened a credit card account in May 2015, which had a \$93 current balance. She was also making payments on terms acceptable to the creditor on a credit card with a \$22 balance. However, no progress was being reported on the medical debts placed for collection in 2011, and a \$250 medical debt

² Applicant testified that she made a misstatement when she said that she forgot to file for an extension of the deadline for filing her tax returns for 2014. She had filed for an extension but then did not file her returns by the extended deadline. (Tr. 46.)

from January 2014 was in collection (SOR ¶1.h). A telecommunications company had placed for collection a \$100 debt from June 2011 (SOR ¶ 1.p) in March 2013 and a \$102 debt from February 2012 (SOR ¶ 1.o) in January 2014. (GE 2.)

Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) on September 15, 2015. She explained that she would file her delinquent income tax returns for tax year 2014 after meeting with her accountant later in the month while she was in her previous locale. Applicant also admitted that she could not afford to make her \$800 monthly mortgage payment after she was injured. She expressed awareness of other financial issues but not of the specifics. When confronted about the delinquencies on her credit record, Applicant did not recognize the medical collection debts but indicated she would look into them. She described her current financial situation as good and improving. (GE 4.)

As of August 10, 2016, Equifax was reporting seven collection debts on her record: \$250 (SOR ¶ 1.h), \$120 from August 2015 (medical, SOR ¶ 1.l), \$81 from December 2014 (medical, SOR ¶ 1.m), \$97 from January 2014 (medical, SOR ¶ 1.n), \$102 (SOR ¶ 1.o), \$100 (SOR ¶ 1.p) and \$28 (SOR ¶ 1.q). No other delinquencies were on her credit record. (GE 3.)

Applicant has been unable to verify the debts alleged in SOR ¶¶ 1.d-1.f, 1.i-1.k, 1.m-1.n, and 1.q, and she does not want to pay any debts that are not legitimate. She did not contact the collection entities identified in the SOR, but instead she tried to match the amounts with her bills and contacted some of her medical providers. (Tr. 54, 62.) When asked why she did not contact the collection entities, she responded: "In my experience, their objective is to collect money, and they're not concerned with the facts." The debts did not appear on a report generated by the credit monitoring service that she uses. (Tr. 54.) Applicant believes the \$120 medical debt in collection (SOR ¶ 1.l) is for a medical procedure she incurred in her new locale. Applicant has been paying what she can afford, approximately \$150 a month, toward newer medical debts, including a large hospital bill that she believes includes the \$120 medical debt.³ (AE A; Tr. 57-59.) After paying approximately \$4,690 in medical expenses in the past year, she owes approximately \$1,400 in medical debt. (Tr. 60.) She expressed her intention to pay those debts that are proven to be valid and plans to hire an attorney to assist in the debt validation. (Tr. 56.)

Applicant disputed the \$374 debt, which she claims is for utility services (SOR ¶ 1.g) and the \$102 telecommunications debt (SOR ¶ 1.o), which she believes is duplicated in SOR ¶ 1.p because the services should have been disconnected at the foreclosure. When Applicant vacated, she opted to have her land line number transferred to her cell phone, and the company failed to turn off the landline after the number was transferred. Applicant has been told that she will not be pursued for the debt because of the company's error. (Tr. 29-31.)

³ Applicant testified that she is paying an average of \$340 a month toward the medical debts incurred since she relocated. (Tr. 56-57.) After her personal appearance, she submitted her monthly budgets for June and July 2017 which show monthly planned payments of \$150 to her medical bills. About \$190 was going to her private student loan. (AE B.)

Applicant filed her tax returns for tax years 2014 and 2015 with her 2016 returns in April 2017. When asked about the delay in filing her returns for 2014, Applicant responded, that she had been unable to meet with her accountant as she had planned, and she attempted to prepare the returns on her own. She knew she did not owe any taxes. It was a matter of gathering her documentation for her deductions. She withheld her income tax return for 2015 in 2016 because she incorrectly believed she needed to file her delinquent return for 2014 before she could file for 2015. (Tr. 46-48.) She owed no federal or state taxes as of May 2017. (Tr. 63.) Applicant intends to comply with tax-filing deadlines in the future. (Tr. 86-87.)

Applicant maintains a monthly budget according to a budget-management class she took in 2016. Her budget fully accounts for her income each month. She takes home \$902 per week on an annual salary of \$68,952. (Tr. 40.) Her rent is \$1,618. Utilities, such as water, natural gas, electricity, telephone, and Internet total approximately \$200 to \$215 a month. About \$200 of her income is spent on groceries. She budgets \$100 per month for miscellaneous expenses. Her payments for student loans and medical debts average \$340 per month. She maintains a “combined fund” containing \$500 to \$1,000 for other expenses, such as property tax, auto maintenance, personal hygiene, clothing, pet care, renter’s insurance, and automobile insurance. (AE B.) She focuses on paying off open balances, starting with the smallest, with funds available after paying her monthly expenses. (AE B; Tr. 69-70, 73.) She recently deferred her federal student loan. (Tr. 42, 70.) She continues to make monthly payments on her private student loans. (Tr. 43.) Once her student loans are paid off, she plans to save enough to cover six months of expenses. (AE B.) As of May 26, 2017, Applicant had \$4,138 in total checking and savings deposits. (AE C.)

Work Performance and References

Applicant has met, and in some aspects of her work performance, exceeded targeted objectives in her current position. She displayed competence in her duties and was given a summary rating of “progressing” on her annual performance review in 2015. In 2016, Applicant was rated as “above target” in providing benefits to her customers and meeting key performance metrics. She received expert ratings from her supervisor in two of five competencies, *i.e.*, developing talent and customer focus. Her overall performance was rated as exceptional. (AE A.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines

are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that 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. Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concerns about financial considerations are articulated in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by

known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The Government met its burden of establishing a *prima facie* case for disqualification. Applicant did not timely file her federal and state income tax returns for 2014 or 2015. Her failure to comply with her income tax filing obligation for 2015 was not alleged in the SOR, but it is relevant in assessing reform of her noncompliance for tax year 2014.⁴ As alleged in SOR ¶ 1.c, she lost her home to foreclosure of her mortgage loan. Available credit reports also reflect some \$4,547 in outstanding collection balances on her credit record, but Applicant admits her liability for only two recent medical debts of \$250 (SOR ¶ 1.h) and \$120 (SOR 1.i).

The burden is on the Government of proving matters that are controverted. See Directive ¶ E3.1.14. The Appeal Board has held that adverse information from a credit report is normally sufficient to meet the substantial evidence standard to establish a debt. See, e.g., ISCR Case No. 14-03612 (App. Bd. Aug. 25, 2015). Applicant presented no corroborating documentation proving that the \$374 debt in SOR ¶ 1.g and that the \$100 telephone debt in SOR ¶ 1.p were for services assessed after she had moved from her foreclosed home. Available credit information shows the account in SOR ¶ 1.g to be a medical debt placed for collection in January 2010. The telecommunications debt in SOR ¶ 1.o is from June 2011, so it could well be explained by the creditor's mistake regarding the landline account for the foreclosed home.

Concerning the disputed medical debts held by the collection entity identified in SOR ¶¶ 1.d-1.f and 1.k, Applicant did not contact the collection entity, but she could not match up her medical bills with any of the debts. However, the same collection entity also holds an undisputed \$250 medical debt (SOR ¶ 1.h) assigned in September 2014. Under the circumstances, it is difficult to understand why she did not contact the collection entity in an effort to determine the legitimacy of the older medical debts, which no longer appear on her credit record as reported by Equifax. Given Applicant's significant and ongoing medical issues since 2008, she could well have incurred medical debt for which she does not currently have any records. Medical billing records of her past care could perhaps raise legitimate questions about the validity of the debts, but none were produced. Based on the record evidence before me, I find that three disqualifying conditions under AG ¶ 19 apply in this case: 19(a), "inability to satisfy debts;" 19(c), "a history of not meeting financial obligations;" and 19(f), "failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required."

Applicant has the burden of mitigating the security concerns raised by the collection debts, mortgage foreclosure, and her noncompliance with her income tax filing obligation.

⁴ The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole person analysis under Section 6.3 of the Directive. See, e.g., ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012).

Under the AG effective for any adjudication on or after June 8, 2017, a record of consumer and tax delinquency may be mitigated under one or more of the following conditions under ¶ 20:

- (a) 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;
- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) has some applicability to the mortgage foreclosure, which occurred more than five years ago. Her noncompliance with her income tax return filing obligation is too recent for mitigation under AG ¶ 20(a). Applicant's 2014 income tax returns were due in October 2015, assuming that she filed for an extension of the filing deadline as she now asserts. On her August 2015 SF 86 and during her September 15, 2015 interview, Applicant indicated that she would be traveling to her previous locale in September 2015 and meeting with her accountant about filing her returns. She testified at her hearing that the timing did not work out and she did not meet with her accountant. Instead, she worked on the tax returns herself and filed both her 2014 and 2015 tax returns with her 2016 tax returns in April 2017. Her inattention to her income tax filing obligation for tax year 2014 from October 2015 to April 2017 constitutes continuing conduct over that time that raises concerns about her judgment, reliability, and trustworthiness. Moreover, medical debts continue to be placed for collection. The medical debts alleged in SOR ¶¶ 1.I-1.n were referred for collection in March 2016, July 2015, and August 2015, respectively. Applicant does not now dispute the \$120 medical debt (SOR ¶ 1.I), although she asserts that it is

“embedded” in the hospital debt that she is repaying. When she answered the SOR, she acknowledged the \$250 medical debt (SOR ¶ 1.h), which was placed for collection in September 2014. AG ¶ 20(a) does not mitigate such recent delinquency.

Applicant has shown some mitigation under AG ¶ 20(b). Her unforeseen work injury in June 2008 without medical clearance to work before late May 2012 is a circumstance contemplated within AG ¶ 20(b). Applicant lacked any control over disability payments that were withheld, and when she did receive payments, they were not sufficient to cover all of her expenses, including her mortgage. Applicant acted responsibly by attempting to modify her home loan, but her lender was deficient in handling her modification and foreclosure. By the time she received settlements for her lender’s deficient handling of her mortgage modification and the foreclosure proceedings, she had already lost her home. The foreclosure on her home does not raise current security concerns, given the deficient handling of her modification request. AG ¶ 20(b) also has some applicability to the collection debts that were incurred when she was unemployed, such as the seven medical debts totaling \$3,769 that were incurred between December 2010 and March 2011 (SOR ¶¶ 1.d-1.g, 1.i-1.k), the \$28 debt from April 2010 (SOR ¶ 1.q), and the \$100 telecommunications debt from June 2011 (SOR ¶ 1.p).

Applicant has made little to no progress on resolving her old medical debts despite her return to full-time employment in September 2013 at a salary of \$42,000 to \$45,000 a year. However, she suffered a serious medical illness in December 2013 which continues to impact her financially because of new medical debt. After paying approximately \$4,690 in medical co-payments over the past year, she owes \$1,400 in recent medical debt. It is understandable that Applicant would give priority to her newer medical debt to ensure a continuation of her present care. Given the extent of her medical debt, Applicant could conceivably overlook a few medical bills. She was unaware of the old medical debt when she decided to pay off her car loan with her temporary disability settlement in May 2015.

Nonetheless, Applicant could have done more to address her old medical debts. She indicated during her September 2015 interview that she would investigate the debts alleged in SOR ¶¶ 1.d-1.k and 1.o-1.q to determine their status. She testified that she had no success matching the debt information with her medical bills, and also that she contacted some of her medical providers, who had no record of the debt(s). Her more recent medical collection debts (SOR ¶¶ 1.l-1.n) are identified in the SOR only by account number, which could make it difficult to locate them if the account does not match her records. Yet, several of her older medical debts are reportedly in collection with the same entity that holds the undisputed \$250 debt (SOR ¶ 1.h), which remains unpaid. Her explanation for not contacting the collection entity—that its primary objective is to collect money without regard to the facts—is speculation not supported by any evidence.

AG ¶ 20(c) and AG ¶ 20(d) has some applicability to the mortgage loan in that the deficiency balance on the loan was covered by her mortgage insurance, and she attempted a modification in good faith before the loan was foreclosed. Her tax issues have also been resolved with the filing of her delinquent tax returns for 2014 and 2015 in April 2017. She has expressed an intention to comply with her tax-filing obligation in the future. Neither AG

¶ 20(c) nor AG ¶ 20(d) has been fully satisfied with respect to the medical collection debts with the possible exception of the \$120 debt (SOR ¶ 1.l), which Applicant indicates is embedded in the hospital charges that she has been repaying. Applicant testified that none of the amounts appeared on her credit report obtained from the credit monitoring service that she uses. Nevertheless, it is noted that debts may be dropped from a credit record for various reasons, such as the passage of time or the failure of a creditor to timely respond to the request of the credit reporting company for information, and removal of a debt from a credit report does not necessarily disprove the debt's validity. Under 15 U.S.C. § 1681c, the Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is later. There is also no substantiating evidence that the debt in SOR ¶ 1.o (\$102) is a duplicate listing of the debt in SOR ¶ 1.p (\$100). While the collection entity and the original creditor are the same, the account numbers differ.

Concerning her delinquent federal and state income tax returns for tax year 2014, AG ¶ 20(g) applies in that her delinquent returns have been filed. Even where tax problems have been corrected, and an applicant is motivated to prevent such problems in the future, the administrative judge is not precluded from considering an applicant's trustworthiness in light of prior behavior evidencing irresponsibility. See *e.g.*, ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's delay in filing her income tax returns for tax year 2014 was because of her failure to gather necessary paperwork for deductions, which was within her control, although there is no evidence that she failed to timely file her income tax returns when she lived in her previous locale and had the assistance of an accountant. The timing of her income tax filings for 2014 and 2015 suggests that her compliance was prompted by the issuance of the SOR. Nonetheless, it is somewhat mitigating that her non-filing was limited to two years.

As for her failure to address most of her medical collection debt, the security clearance adjudication is not aimed at collecting an applicant's personal debts. Rather, it involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). In evaluating Guideline F cases, the Appeal Board has established that an applicant is not required to pay off every debt in the SOR:

The Board has previously noted that the concept of a 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 evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that the plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may

provide for the payments 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.

See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Based on Appeal Board precedent, Applicant is not required to pay off her SOR debts if she is handling her finances in a manner that shows sound judgment. She presented evidence showing that she is paying approximately \$150 per month toward her newer medical debts. Her line items in her budget are reasonable and do not reflect any extravagant spending. She appears to have her spending in control, and she lives within her means. She owes less than \$5,000 in delinquent debt so it is not likely to be a source of financial pressure based on her current income of \$68,952.

Applicant expressed an intention to retain the services of an attorney to assist her in investigating the past-due balances on her credit record. Certainly, she would have a much stronger case in mitigation had she done so before her hearing. A promise to pay a delinquent debt in the future, no matter how sincerely made, is not a substitute for having paid the debt. See e.g., ISCR Case No. 14-04565 (App. Bd. Sep. 18, 2015). Nonetheless, she has taken reasonable steps to stabilize her finances that weigh in her favor. She is seen as likely to make payments toward verified financial obligations.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).⁵ The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

It is understandable that some debts went to collections in light of Applicant's unemployment for some four years. Her debt is largely medical, and nondiscretionary medical debt is not viewed as negatively as had Applicant taken on credit card or loan debt beyond her ability to repay. A person rarely chooses to incur significant medical debt, and it is often not planned for in a person's budget. Applicant has given priority to stabilizing her finances over correcting the adverse credit information on her record, even to the extent of replenishing her emergency fund over ensuring that all of her medical debts are being repaid. Yet, given her financial struggles during her lengthy unemployment, her desire to ensure that she has some cash on hand for an emergency is understandable. Her belated

⁵ The factors under AG ¶ 2(d) are as follows:

(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.

compliance with her income tax filing obligations for 2014 and 2015 generates some concern, but it appears to have been situational and not likely to be repeated, now that she understands the importance of filing on time whether or not she is owed a refund.

While there is a strong presumption against the grant or renewal of a security clearance when there are issues of some security concern,⁶ Applicant's performance evaluations show that she has been a valued contributor at work. She was given the highest overall rating for her performance for 2016. Her good work record weighs in her favor. The evidence of her consistent medical payments over the past year and the relatively small amount yet to be addressed suggests that she can be counted on to address her unresolved financial issues. After considering the whole-person concept, I conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

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-1.q: For Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge

⁶ See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990).