



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



In the matter of:

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ISCR Case No. 16-02941

Applicant for Security Clearance

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

07/31/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant did not provide sufficient evidence of resolution of her financial issues, and financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On September 11, 2015, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On November 1, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs).

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

Applicant provided an undated response to the SOR, and on February 1, 2017, Department Counsel requested a hearing. (HE 4) On February 14, 2017, Department Counsel was ready to proceed. On February 15, 2017, the case was assigned to me. On March 28, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for April 18, 2017. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered eight exhibits; Applicant offered nine exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 15-19; GE 1-8; Applicant Exhibits (AE) A-I) On April 26, 2017, DOHA received a copy of the transcript of the hearing.

While this case was pending a decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs) which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Findings of Fact²

Applicant's SOR response admitted the SOR allegations in ¶¶ 1.a, 1.d, 1.f, and 1.g. She also made some partial admissions. She also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is 42 years old, and she has been employed as a senior network administrator for a DOD contractor since January 2015. (Tr. 7; GE 1) In 1993, she graduated from high school. (Tr. 7) By the end of 2017, she expected to complete requirements for her bachelor's degree in information security. (Tr. 8) She served in the Army from 1993 to 2001; she was a staff sergeant when she left active duty; her military occupational specialties (MOS) were message switching and technical control; she served two tours in South Korea; and she received an honorable discharge. (Tr. 8-9) She was married from 1999 to 2000, from 2001 to 2008, and from 2008 to 2011. (AE B) Her children are ages 15 and 25. (Tr. 20) She served as a DOD contractor overseas from October 2010 to January 2015. (Tr. 38) She has held a security clearance since 1993. (Tr. 51) There is no evidence of security violations, alcohol abuse, or use of illegal drugs.

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

² Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Financial Considerations

Applicant was unemployed from December 2008 to February 2009, from May 2009 to September 2009, and from March 2010 to October 2010. (AE B) When Applicant was overseas from October 2010 to January 2015, her salary ranged from \$90,000 to almost \$120,000. (Tr. 38, 61) Applicant's current annual salary is \$98,560. (Tr. 20; AE A) She provided a budget; however, some expenses were not listed in her budget. (Tr. 21, 44; AE B) She has about \$8,000 in her savings account. (Tr. 21) She does not have a retirement account. (Tr. 21) She has not received financial counseling. (Tr. 22) Her taxes, rent, active credit cards, and car payments are current. (Tr. 22, 52-53; AE G-AE I) She paid one delinquent utility debt for about \$1,000 that was not on her SOR because she could not get utilities without paying the debt. (Tr. 57) She also paid some personal loans. (Tr. 53-57)

Applicant disputed her responsibility for several debts because she believed they may have been the debts that were the responsibility of her former husband. (Tr. 41) Applicant's October 23, 2015 Experian, TransUnion, and Equifax credit report shows all of the debts listed on her SOR. (GE 6; AE B) The status of her 11 SOR debts is as follows.

¶ 1.a alleges a telecommunications debt placed for collection for \$151. Applicant said she paid it in February 2017; however, she did not provide any proof that she paid it. (Tr. 23, 45)

¶ 1.b alleges a \$67,460 mortgage past due in the amount of \$8,276. Applicant said this debt may have been from a home she owned about 17 years ago. (Tr. 24) Her credit report indicates the account was opened in 2006, and the last action on the account was in 2009. (Tr. 25, 58; GE 6 at 3; GE 7) She said she got rid of that home in 2006. (Tr. 25) She lost her paperwork on the debt. (Tr. 25) She was unable to locate the account because it was transferred. (Tr. 26) She disputed the debt, and she said she is not legally responsible for it. (Tr. 29) Her December 8, 2013 SCA indicates a mortgage debt to a different mortgage lender was initiated in February 2006 and resolved in June 2009, and she explained "advised collateral was collected to resolve debt." (GE 2 at 50) Her October 23, 2015 Experian, TransUnion, and Equifax credit report indicates this account was in foreclosure. (GE 6 at 3)

¶ 1.c alleges a bank debt placed for collection for \$9,256. This collection debt was shown on Applicant's October 23, 2015 Experian, TransUnion, and Equifax credit report with a last act on account in November 2009. (Tr. 30; GE 6 at 3) Applicant said she disputed her responsibility for the debt online. (Tr. 30) She did not file a police report indicating she was the victim of identity theft. (Tr. 30) She said this debt was removed from her credit report. (Tr. 30-31) She did not provide a copy of her dispute.

¶ 1.d alleges a credit union debt placed for collection for \$4,661. This collection debt was shown on Applicant's October 23, 2015 Experian, TransUnion, and Equifax credit report with a last act on account in June 2011. (GE 6 at 3) Applicant acknowledged that the credit report was probably correct that she opened the account in November 2006; however, she believed the credit report incorrectly stated the payments ended in

June 2011. (Tr. 32-33, 44, 54) She has not done anything about this debt for several years, and she was unclear about what she would do about it in the future. (Tr. 35)

¶ 1.e alleges a charged-off utility debt for \$525. The collection debt was shown on Applicant's October 23, 2015 Experian, TransUnion, and Equifax credit report with a last act on account in September 2009. (GE 6 at 4) She disputed her responsibility for this debt because the utilities were in her former husband's name. (Tr. 35, 45-47) She may have received something from the utility company in response to her dispute. (Tr. 36) She did not provide a copy of her dispute or the response from the utility company.

¶ 1.f alleges a mortgage debt foreclosed in about 2012. The foreclosure of a mortgage debt guaranteed by the Department of Veterans Affairs (VA) was shown on Applicant's October 23, 2015 Experian, TransUnion, and Equifax credit report with a last act on account in July 2012. (GE 6 at 4) Because the VA guaranteed the payment of the loan, she did not believe she owed anything on the debt. (Tr. 36)³ She lived in the home about one year without making any payments on the mortgage. (Tr. 37)

¶ 1.g alleges a debt resulting from a vehicle repossession. The balance on the debt was \$15,478. She acknowledged that her vehicle was repossessed. (Tr. 44) Applicant did not pay anything to address the debt because it was charged off. (Tr. 37, 39) When she communicated with the creditor in January 2011, the creditor did not seem interested in getting paid. (Tr. 47) She has not communicated with the creditor since January 2011. (Tr. 38) She did not know how much she might owe after the creditor sold the vehicle. (Tr. 39) Her April 3, 2017 Experian credit report shows the account was opened in May 2008, and the last payment was made in September 2010. (AE I at 13)

SOR ¶¶ 1.h, 1.i, 1.j, and 1.k allege: a bank debt placed for collection for \$653; a telecommunications debt placed for collection for \$545; a debt placed for collection for \$330; and a telecommunication debt placed for collection \$190. Applicant disputed her responsibility for these four debts, and they were removed or do not appear in her April

³ The VA loan guarantee is as follows: "For loans between \$45,000 and \$144,000, the minimum guaranty amount is \$22,500, with a maximum guaranty, of up to 40 percent of the loan up to \$36,000, subject to the amount of entitlement a veteran has available." As to whether the VA loss on a loan must be repaid, the VA explains:

Must the loan be repaid?

Yes. A VA guaranteed loan is not a gift. It must be repaid, just as you must repay any money you borrow. The VA guaranty, which protects the lender against loss, encourages the lender to make a loan with terms favorable to the veteran. But if you fail to make the payments you agreed to make, you may lose your home through foreclosure, and you and your family would probably lose all the time and money you had invested in it. If the lender does take a loss, VA must pay the guaranty to the lender, and the amount paid by VA must be repaid by you. If your loan closed on or after January 1, 1990, you will owe the Government in the event of a default only if there was fraud, misrepresentation, or bad faith on your part.

Factsheet VAP 26-4 is available on the VA website at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&uact=8&ved=0CD4QFjAA&url=http%3A%2F%2Fwww.benefits.va.gov%2Fhomeloans%2Fdocs%2Fvap_26-4_online_version.pdf&ei=q4QbU_zSCaST0QH0mIDwAg&usq=AF_QjCNFv0-ay6SGFdfcDFlaE7aENpSq0cA.

3, 2017 Experian credit report. (Tr. 39-40; AE A; AE I) She did not provide a copy of the disputes.

In sum, Applicant said she paid the debt in SOR ¶ 1.a, and the rest of the SOR debts were either charged off or disputed. (Tr. 41) She does not intend to pay the charged-off debts. (Tr. 41) The exception is her home mortgage which was guaranteed and paid by the VA on her behalf. (Tr. 41) For a time, her student loans creditors were garnishing her pay and intercepting her income tax refunds. (Tr. 42-43) About \$20,000 was garnished resulting in the payment of her student loans in 2013. (Tr. 43, 55) The only negative entries on her April 3, 2017 Experian credit report are her charged-off vehicle repossession in SOR ¶ 1.g and her student loans, which were resolved through garnishment of her pay. (AE I)

Character Evidence

On January 26, 2017, Applicant's company provided a letter of appreciation, promotion, and salary increase of 9.52 percent. (AE C) Applicant's sister wrote that Applicant's mother had mental health issues and exhibited bad conduct, and their mother tended to make false allegations against her children. (AE D) An Army sergeant major, who has known Applicant for 17 years, described her as careful with sensitive and classified information, trustworthy, reliable, and responsible. (AE E) A Marine, who has known Applicant for 13 years, described her as knowledgeable, helpful, trustworthy, and responsible. (AE F)

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, Secretary of Defense, and DNI 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 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) 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.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" "(b) unwillingness to satisfy debts regardless of the ability to do so;" and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(a) the behavior happened so long ago,⁴ 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 individual has received or is receiving financial 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;

⁴ 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)).

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;⁵ 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 DOHA 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 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).

None of the mitigating conditions fully apply; however, Applicant presented some mitigating information. She was unemployed from December 2008 to February 2009, from May 2009 to September 2009, and from March 2010 to October 2010. In 2011, she was divorced. She was the victim of identity theft. These circumstances beyond her control adversely affected her finances; however, she did not prove that she acted responsibly under the circumstances. She did not provide police reports indicating the identity theft or provide copies of disputes of negative entries on her credit report. She did not prove she could not have done more to address her delinquent debts once she became employed.

⁵ 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's mortgage was guaranteed by the VA. There is no evidence Applicant engaged in fraud, misrepresentation, or bad faith. See *supra* note 3. SOR ¶ 1.b is resolved, and Applicant is credited with mitigating SOR ¶ 1.b. Applicant said she paid the debt in SOR ¶ 1.a for \$151, and she is credited with mitigating this debt. The magnitude of the debt is too small to require supporting documentation of payment. Her taxes, rent, active credit cards, and car payments are current. She paid one delinquent utility debt for about \$1,000. She also paid some personal loans and her student loan debt.

Applicant relies upon the absence of delinquent debts from her current credit report to mitigate security concerns. "[T]hat some debts have dropped off his [or her] credit report is not meaningful evidence of debt resolution." ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). 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 longer.⁶ Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid or when the debt has been charged off. The Appeal Board "has repeatedly held the non-collectability of a debt [as designated by a charge off designation in a credit report] does not preclude consideration of the debt and circumstances surrounding it in a security clearance adjudication." ISCR Case No. 15-05049 at 3 (App. Bd. July 12, 2017) (citing ISCR Case No. 09-08550 at 4 (App. Bd. Feb. 25, 2011)).

All states have statutes of limitations upon collectability of car loans, unsecured bank loans, and credit card debts, which range from three to six years. The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[iled] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted). As a general statement, under the Appeal Board's jurisprudence, debts that are beyond the statute of limitations for collections cannot be mitigated solely because they are not collectable.⁷

⁶ Title 15 U.S.C. § 1681c. See Federal Trade Commission website, Summary of Fair Credit Reporting Act Updates at Section 605, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>.

⁷ The statute of limitations clearly and unequivocally ends an Applicant's legal responsibility to pay the creditor after the passage of a certain amount of time, as specified in state law. In a series of decisions

Recently, the DOHA Appeal Board reinforced its position on statutes of limitations not mitigating financial considerations concerns stating:

In this case, the Judge noted that Applicant explained that he did not owe any of the alleged debts because they had either been deleted from his credit report or soon would be deleted, and he also relied on a state statute of limitations to absolve himself of debts. The Appeal Board has long recognized that debts remain relevant for security clearance purposes even if they are no longer enforceable due to the running of the statute of limitations or cannot be legally listed on a credit report due to the passage of time. See e.g., ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005) and ISCR Case No. 03-20327 at 6 (App. Bd. Oct 26, 2006).⁸ We also have held that reliance on a state's statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigative value. ADP Case No. 06-18900 at 5 (App. Bd. Jun. 6, 2008) (citing ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005) and ISCR Case No. 01-09691 at 2-3 (App. Bd. Mar. 27, 2003)).

ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016). See ISCR Case No. 15-01495 at 2 (App. Bd. July 14, 2017)

In 2011, Applicant elected to stop paying some of her debts even though she was employed. Those debts may now be uncollectible due to the passage of time. She does not intend to pay several SOR debts because they were dropped from her credit report or were charged-off or both. Without more evidence about why the debts were removed from her credit report and what she did during the last five years to resolve them, those debts are not mitigated for security clearance purposes.⁹

the Appeal Board has repeatedly rejected the statute of limitations for debts generated through contracts, which is the law in all 50 states, as automatically mitigating financial considerations concerns under AG ¶ 20(d). See ISCR Case No. 14-02394 at 3-4 (App. Bd. Aug. 17, 2015); ISCR Case No. 08-01122 at 4 (App. Bd. Feb. 9, 2009); ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008); ADP Case No. 07-13041 at 5 (App. Bd. Sep. 19, 2008); ISCR Case No. 07-11814 at 2 (App. Bd. Dec. 29, 2008) ADP Case No. 06-14616 at 3 (App. Bd. Oct. 18, 2007) (stating, "reliance upon legal defenses such as the statute of limitations does not necessarily demonstrate prudence, honesty, and reliability; therefore, such reliance is of diminished probative value in resolving trustworthiness concerns arising out of financial problems. See, e.g., ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)."). This opinion does not assert that the statute of limitations provides any mitigation under Guideline F; however, this aspect of Applicant's financial situation is a circumstance which may explain Applicant's failure to take more timely and aggressive actions to resolve her delinquent debts. The Appeal Board has not defined how long after the statute of limitations expires an Applicant must wait before receiving a fresh start similar to that received when debts are discharged under Chapter 7 of the Bankruptcy Code.

⁸ Compare ISCR Case No. 12-04806 (App. Bd. Jul. 3, 2014). In that case, Applicant corroborated efforts to settle debts that were in "charged-off" status. Also, that Applicant had received financial counseling. Ultimately, the Board affirmed the Judge's favorable decision.

⁹ The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

Applicant did not provide enough details about what she did to address the debts alleged in SOR ¶¶ 1.c through 1.k over the last five years. She did not provide sufficient documentation relating to these nine SOR debts such as: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that she paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact;¹⁰ (3) copies of credible debt disputes sent to the creditor and/or credit reporting company indicating she did not believe she was responsible for the debts and why she held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that she was attempting to resolve these debts; or (5) other evidence of progress or resolution. Applicant failed to establish mitigation for disputing her debts under AG ¶ 20(e) because she did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

There is insufficient evidence about why Applicant was unable to make greater progress resolving her SOR debts. There is insufficient assurance that her financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, she failed to establish that financial considerations security concerns are mitigated.

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(d):

(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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

¹⁰ "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.

Applicant is 42 years old, and she has been employed as a senior network administrator for a DOD contractor since January 2015. By the end of 2017, she expected to complete requirements for her bachelor's degree in information security. She served in the Army from 1993 to 2001; she was a staff sergeant when she left active duty; her MOSs were message switching and technical control; she served two tours in South Korea; and she received an honorable discharge. She was divorced in 2011. Her children are ages 15 and 25. She served overseas as a DOD contractor from October 2010 to January 2015. Her character evidence supports granting her access to classified information. She has held a security clearance since 1993. There is no evidence of security violations, alcohol abuse, or use of illegal drugs.

The financial evidence against granting Applicant's security clearance is more substantial. She provided insufficient corroborating or substantiating documentary evidence of payments and established payment plans for the SOR debts in ¶¶ 1.c through 1.k. She did not provide a detailed plan about how she intended to resolve all of her delinquent SOR debts. Her actions show lack of financial responsibility and judgment and raise unmitigated questions about her reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More documented information about her inability to pay debts, financial history, credible debt disputes, or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of her past-due debts, and a track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

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 consideration security concerns are not mitigated. It is not clearly consistent with the interests of national security 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:

AGAINST APPLICANT

Subparagraphs 1.a and 1.b:

For Applicant

Subparagraphs 1.c through 1.k:

Against Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge