



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



In the matter of:)	
)	
)	ISCR Case No. 16-03916
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro se*

07/27/2018

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 30 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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 (AG).¹

Applicant responded to the SOR on February 23, 2017, and requested a hearing before an administrative judge. The case was assigned to me on November 9, 2017.

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 26, 2018, scheduling the hearing for February 16, 2018. On January 30, 2018, Department Counsel amended the SOR, pursuant to ¶ E3.1.17 of the Directive, to add an allegation numbered SOR ¶ 1.t under Guideline F. Applicant responded on the same date and admitted the allegation.² I marked the amendment and Applicant's response as Hearing Exhibit (HE) III.

I convened the hearing as scheduled. The Government's demonstrative chart and exhibit list were appended to the record as HE I and II. Government Exhibits (GE) 1 through 10 were admitted in evidence without objection. Applicant testified, called two witnesses, and submitted Applicant's Exhibits (AE) A through W, which were admitted in evidence without objection.

At Applicant's request and with no objection from Department Counsel, I left the record open until March 30, 2018, for Applicant to submit additional documentation. After the record closed, Applicant provided additional evidence on May 29, 2018, which I marked as AE X. I admitted AE X into evidence without objection. I marked as HE IV Department Counsel's email in which he indicated that he did not object to AE X. DOHA received the hearing transcript (Tr.) on February 27, 2018.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a to 1.d, 1.f to 1.i, and 1.p to 1.t. She denied ¶ 1.m, indicating that it was a duplicate of ¶ 1.i. She neither admitted nor denied ¶¶ 1.e, 1.n, and 1.o.³

Applicant is 48 years old. She was married in 1996, divorced in 2005, and engaged to be married as of the date of the hearing. She has two adult children, both of whom were living with her.⁴

Applicant graduated from high school in 1988, and she subsequently attended and received a certification from a trade school in 1989. She worked as a federal government civilian from 1989 to around 2006. She has since worked for defense contractors, but was unemployed from March 2014 until April 2015 due to a layoff. She began working for her current defense contractor in around June 2015. To supplement her income, she had a part-time fashion business from 2013 until her layoff. She also had a part-time desktop publishing business from 2015 to 2016, which she stopped because she saw more losses than gains. She was first granted a DOD security clearance at the age of 19.⁵

² Tr. at 13; HE III.

³ HE III.

⁴ Tr. at 7-8, 10-11, 90-95, 111, 117, 145-146; GE 1, 2; AE A, B.

⁵ Tr. at 7-8, 10-11, 90-95, 111, 117, 145-146; GE 1, 2; AE A, B.

The SOR alleges an April 2015 federal tax lien of \$32,689 (¶ 1.j), two judgments from January 2012 and February 2014 totaling \$28,172 (¶¶ 1.k - 1.l), eight delinquent consumer accounts totaling \$77,131 (¶¶ 1.a - 1.d, 1.h, 1.m, 1.p, 1.s), and seven delinquent medical accounts totaling \$1,216 (¶¶ 1.e - 1.g, 1.i, 1.n - 1.o, 1.q). It alleges that Applicant's wages were garnished by her employer in around April 2006 for \$10,478 (¶ 1.r). It alleges that Applicant filed Chapter 13 bankruptcy in July 2017 (¶ 1.t). The SOR allegations are established by Applicant's admissions, state court lien records, credit reports from March 2015, November 2016, and January 2018, and bankruptcy records. Applicant also listed and discussed her delinquent debts in her 2015 security clearance application (SCA) and during her 2016 background interview.⁶

Applicant attributes some of her delinquent debts to her divorce. In June 2012, she got into a car accident and was consequently out of work until January 2013. When her father passed away in January 2013, she had to assist with funeral obligations. She was laid off in March 2014 and subsequently unemployed until April 2015. She supported herself through unemployment benefits of \$359 weekly, for a maximum of \$9,334, from April 2014 to April 2015. Sometime after she began working for her current defense contractor, she was moved to a program in which she suffered a \$6,000 pay cut. Her parking costs at work increased. She feels her homeowner's association (HOA) is dishonest and inaccurate, as further discussed below. She has had health issues since 2008, her children have also had health issues, and her fiancé has cancer.⁷

SOR ¶ 1.a is for a real estate mortgage account on Applicant's condominium that she purchased in May 2007. As of the SOR, the account was \$48,152 past due with a total balance of \$386,838. It became delinquent in 2014, after she was laid off. She did not make any mortgage payments from November 2014 to April 2015. She attempted to short sell the home, but she did not receive an offer until nearly a year had passed and the offer was rejected in August 2016. She had difficulty selling her home because she has had a roofing problem since at least late 2016, which has caused water to leak into her home. Despite her attempts to get her HOA to repair her roof, the problem persisted as of the hearing date. In August 2016, she started the mortgage modification process. She was approved in January 2017, her mortgage was modified to \$1,934 monthly, and she has since been current.⁸

SOR ¶ 1.b is for a credit card debt incurred during Applicant's prior marriage that was charged off for \$1,604. She believed it was paid, but learned it was not after her divorce. As of February 2017, she paid \$827 and a remaining balance of \$777 was due. She listed this debt in her bankruptcy case.⁹

⁶ GE 1-10.

⁷ Tr. at 92, 96, 111, 116-117, 123, 129-130, 145-147; GE 1, 2; AE A, B, L, M.

⁸ Tr. at 95-102, 117; GE 1, 2; AE D, F, G, H, I, K, U.

⁹ Tr. at 102-104, 111; GE 2, 9; AE N.

SOR ¶ 1.c is for a store credit card also incurred during Applicant's prior marriage. It was charged off for \$330. She also believed it was paid, until the creditor informed her that it was outstanding. She indicated that when she tried to pay it, she was told that she could not do so because of the statute of limitations.¹⁰

SOR ¶¶ 1.d and 1.h are accounts related to her son's musical instruments, delinquent for a total of \$390. Applicant paid the accounts in 2012.¹¹

SOR ¶¶ 1.e, 1.f, 1.g, 1.i, 1.n, 1.o, and 1.q are seven delinquent medical debts totaling \$1,216. SOR ¶ 1.e was for a visit to an ear, nose, and throat doctor in around 2008 that Applicant believed she had paid. When she attempted to contact the doctor's office, she learned that it was no longer in business. As the debt was not reported on her credit reports, she did not list it in her bankruptcy case. She was willing to pay it once she located the creditor. She paid SOR ¶¶ 1.f, 1.g, and 1.i as of February 2017. She incurred SOR ¶¶ 1.f and 1.g during her prior marriage. SOR ¶ 1.i was an old debt for which she had to research and locate the creditor to pay it. She had no knowledge of the medical debts in SOR ¶¶ 1.n and 1.o, and both were not reported in her recent credit reports. She paid SOR ¶ 1.q in November 2015.¹²

In April 2015, the IRS placed a federal tax lien against Applicant for \$32,689, as alleged in SOR ¶ 1.j. The circumstances that led to the IRS lien were discussed by Applicant's tax preparer, who testified at the hearing as set forth below. As of November 2016, Applicant owed \$18,900 in federal taxes for tax year 2008, \$1,200 in federal taxes for tax year 2009, and \$4,500 in federal taxes for tax year 2011. She indicated that she was due federal refunds for tax years 2012, 2013, 2015, and 2016. She believed her outstanding federal taxes for tax year 2008 were resolved through the interception of her subsequent federal and state tax refunds. She believed she owed around \$6,000 in federal taxes for tax years 2009, 2010, and 2011. She intended to provide documentation to corroborate her claims. For tax year 2014, the IRS indicated that she owed \$32,000, however her tax preparer was awaiting the IRS response to an amendment he submitted, which he believed would reduce her liability to \$10,000, as discussed below.¹³

Applicant worked with three tax preparers from around 2008 through the date of the hearing. The first individual prepared her tax returns for 2008 through 2011. The second tax preparer, who testified at Applicant's hearing as discussed below, prepared her tax returns for 2012 and 2013, and assisted her with resolving the issues that arose out of her prior and subsequent tax returns. A third individual prepared her tax returns for 2014 and 2015, when the second tax preparer was unavailable. As of the date of the

¹⁰ Tr. at 104-105, 111; GE 2.

¹¹ Tr. at 105-108; GE 2; AE O.

¹² Tr. at 108-113, 134-135, 140; GE 1, 2; AE L, P, Q.

¹³ Tr. at 34-60, 141-145; GE 1, 2; AE D, E, F, H, R.

hearing, she was current on her federal and state filings, and she expected to timely file her tax returns for 2017 with the assistance of the second tax preparer.¹⁴

SOR ¶ 1.k is for a \$14,424 judgment filed against Applicant in 2014 by her HOA for delinquent HOA dues. Applicant first became delinquent with her HOA dues of \$199 monthly in 2009, when she had to care for her ill mother. She was delinquent for six months. She requested a payment plan with her HOA, her request was denied, and the HOA then placed a lien against her property. She testified that her mother recovered and she was subsequently able to bring her HOA dues current.¹⁵

After the 2012 car accident, Applicant again became delinquent on her HOA dues and the HOA obtained a judgment against her. Her HOA dues also increased to \$250 monthly after she unsuccessfully attempted to renegotiate them after the short sale of her home fell through. She included the judgment and delinquent HOA dues in her bankruptcy. While she made a payment on her HOA dues when she filed bankruptcy, and she made a few additional payments on them thereafter, she had not made consistent payments because the HOA had yet to fix her roofing problem. As of the date of the hearing, she had not paid her HOA dues since September 2017, in addition to the outstanding judgment. Since she filed bankruptcy, she estimated that she has saved \$200 monthly for a total of \$2,000, which she intended to apply towards her outstanding HOA dues once her bankruptcy was finalized.¹⁶

SOR ¶¶ 1.l and 1.m are duplicate accounts for a personal loan Applicant obtained in 2010. She initially fell delinquent after her car accident in 2012. In January 2013, the creditor obtained a \$13,748 judgment against her after the account was charged off for \$7,543. Though she entered into a payment arrangement with the creditor, she became delinquent again after she was laid off in February 2014. She made a payment with some of the money that she withdrew from her 401(k). With the help from her bankruptcy attorney, Applicant's wages were voluntarily garnished beginning in July 2015 for \$325 monthly, as alleged in SOR ¶ 1.r, to resolve this debt. She included the debts in her bankruptcy case. After she filed bankruptcy, she received notification from the creditor indicating the debts were resolved. Her wages were not being garnished as of the date of the hearing.¹⁷

SOR ¶ 1.p is for a personal loan Applicant obtained in around 2009. She became delinquent for \$18,888 in around mid-2014. She intended to use the proceeds from the short sale of her home to resolve the account. When the short sale fell through, she entered into a payment arrangement with the creditor. As of February 2017, her outstanding balance was \$9,608. She received an offer of settlement for \$3,843. At the

¹⁴ Tr. at 34-60, 141-145; GE 1, 2; AE R.

¹⁵ Tr. at 113-123; GE 1, 2, 6; AE H, S.

¹⁶ Tr. at 113-123; GE 1, 2, 6; AE H, S.

¹⁷ Tr. at 123-134, 140; GE 1, 2; 9 AE H, T, V.

advice of her attorney, she intended to resolve this debt by including it in her bankruptcy.¹⁸

SOR ¶ 1.s is for a store account through which Applicant financed several appliances. She paid this debt as of February 2017.¹⁹

Applicant filed Chapter 13 bankruptcy in July 2017, as alleged in SOR ¶ 1.t. She hired a bankruptcy attorney to do so, who testified at the hearing as discussed below. On May 21, 2018, the bankruptcy court confirmed Applicant's bankruptcy plan. One provision of the court order is that Applicant pay the following to the Trustee over the course of 60 months: \$300 monthly for 9 months, then \$453 monthly for 15 months, then \$1,445 monthly for 36 months. Applicant is also to turn over any future tax refunds, and provide a copy of each federal income tax return and any amendment at the time of filing.²⁰

As of the date of the hearing, Applicant's assets had not substantially changed since she filed bankruptcy. Her annual salary was \$131,000. She withdrew \$58,000 from her 401(k) in early 2014. She believed her retirement savings were roughly \$12,000. Applicant paid the outstanding balance on her car in late 2016. Her monthly expenses, prior to the May 2018 confirmation of her bankruptcy plan, included her \$1,934 mortgage, \$300 bankruptcy payments, \$400 to assist her children with their college expenses, \$500 water bill, \$300 electric bill, \$450 to \$500 gas bill, and \$200 cable and internet bill. She estimated that her monthly net remainder after these expenses was around \$200, which she then used for groceries.²¹

Applicant also financially assisted her fiancé, who was receiving disability pay and was unemployed as of the date of the hearing, though he did not live with her and also contributed to her household when possible. She expected to work with her tax preparer to formulate a budget. She received financial counseling from both her tax preparer and her bankruptcy attorney. She also received financial counseling through a credit union as well as through the bankruptcy process.²²

Applicant's first witness was Applicant's tax preparer. He was an accountant, with experience in the banking and mortgage industries. She first consulted with him in March 2014 for tax assistance. She needed to rectify her income tax returns for tax years 2008 through 2011 that had been prepared by another tax professional and resulted in her owing back taxes. She needed to file her outstanding income tax returns

¹⁸ Tr. at 135-139; GE 2; AE U.

¹⁹ Tr. at 140-141; AE W.

²⁰ Tr. at 60-90; GE 8, 9, 10; AE X.

²¹ Tr. at 34-90, 126-127, 145-150; GE 1, 2; AE C, J.

²² Tr. at 34-90, 126-127, 145-150; GE 1, 2; AE C, J.

for tax year 2012. And, she needed to file her income tax returns for tax year 2013 that were coming due.²³

The witness testified that he reviewed Applicant's 2008 through 2011 income tax returns and identified gross errors made by the tax professional who prepared those returns, which resulted in Applicant receiving refunds for those tax years when she should have owed around \$20,000 in federal taxes. She owed zero in state taxes. The witness indicated that the tax professional inaccurately accounted for Applicant's part-time business, and failed to sign the tax returns, as they were solely signed by Applicant.²⁴

Due to her limited finances, Applicant could not afford for the witness to amend the returns. Thus, he recommended that she accept the IRS determination that she owed \$20,000 for those tax years. He then prepared her 2012 and 2013 income tax returns, accounted for the losses from her part-time business, and filed them on her behalf by the filing deadline for the 2013 tax returns in April 2014. Through his services, she was due federal refunds of \$2,920 and \$9,000, and state refunds of \$2,000 and \$4,067, for tax years 2012 and 2013. These refunds were applied to her 2008 through 2011 back taxes, thereby reducing her outstanding tax liability. They anticipated a similar scenario going forward.²⁵

Due to unrelated personal circumstances, the witness was unable to prepare Applicant's 2014 and 2015 income tax returns by their filing deadline. Applicant thus sought the assistance of a third tax professional. She subsequently received an IRS notice indicating that she owed \$32,000 for tax year 2014. When the witness learned of the IRS notice, he obtained a copy of Applicant's 2014 tax return from the third tax professional after significant delay, and noted that this individual also indicated that the return was self-prepared. The witness then prepared at least two amendments to the 2014 return; the initial amendment was rejected by the IRS and the second amendment, submitted in January 2018, was pending an IRS response as of the date of the hearing.²⁶

The witness noted gross negligence on the part of the third tax professional, who reported that Applicant received money from her 401(k) and IRS distributions totaling \$140,000, but failed to report such money as taxable income. Additionally, the third tax professional failed to report Applicant's business income and expenses for that year. The witness expected that Applicant's outstanding liability of \$32,000 for tax year 2014 would be reduced to between \$10,000 and \$14,000. As Applicant was laid off during tax

²³ Tr. at 34-60.

²⁴ Tr. at 34-60; GE 1, 2.

²⁵ Tr. at 34-60; GE 1, 2.

²⁶ Tr. at 34-60, 126-127.

period 2015, the witness noted that the third tax professional had correctly completed and filed her tax return for that year.²⁷

The witness prepared and timely filed Applicant's tax return for tax period 2016. Applicant was due a federal refund of \$9,639 and a state refund of \$2,929, which were also applied to her outstanding tax liability. He expected to prepare her tax return for tax period 2017 shortly after the date of the hearing, and continue to provide her with financial counseling. He testified that when he asked Applicant how she failed to notice the negligence by the other two tax professionals, she responded that she relied on their professional expertise. Applicant did not owe the witness any money as of the date of the hearing.²⁸

The second witness was a bankruptcy attorney Applicant contacted in July 2017, for help with resolving her outstanding HOA dues. The witness understood that Applicant fell behind on her HOA dues because she was a single parent raising two children, and she suffered a loss of employment for a period. The witness indicated that the HOA filed a lien against Applicant in 2009, and last filed a lien against her in 2014. She assisted Applicant by writing to the HOA and informing them that Applicant wanted to make payments towards her outstanding HOA dues. When the HOA began pursuing the matter judicially, however, Applicant elected to file Chapter 13 bankruptcy and did so in July 2017.²⁹

As of the date of the hearing, the witness testified that Applicant owed \$25,000 in outstanding HOA dues. The witness indicated that the bankruptcy court granted her motion to avoid the HOA liens, as the property against which the liens were placed lacked sufficient value to secure them. The HOA liens consequently became unsecured debt, and when Applicant's bankruptcy case is completed, she will no longer have any HOA liens against her real property. The witness believed that the remaining liens against Applicant's property included those from the utility companies, the IRS, and Applicant's first mortgage company.³⁰

In response to Applicant's bankruptcy case, the witness testified that the IRS claimed that Applicant owed \$32,689 in outstanding federal taxes for tax year 2014. The witness noted on the bankruptcy petition that Applicant disputed the amount of the IRS claim, because she understood that Applicant was working with the first witness to correct that amount. The witness intended to supply to the IRS the latest amendment to Applicant's federal tax returns for tax year 2014, as prepared by the first witness, in hopes of resolving the IRS claim informally rather than having to file an objection to it.

²⁷ Tr. at 34-60, 126-127.

²⁸ Tr. at 34-60, 146.

²⁹ Tr. at 60-90; GE 8-10; AE H.

³⁰ Tr. at 60-90; GE 8-10; AE H.

The witness also listed the state tax authority in Applicant's bankruptcy petition out of precaution, but was unaware that Applicant had any state tax liability.³¹

In addition to Applicant's HOA dues and federal back taxes, the witness listed \$25,700 in unsecured liability on Applicant's bankruptcy petition. As the witness obtained the information about Applicant's outstanding unsecured liability from Applicant's credit reports and documentation given to her by Applicant, she listed all of Applicant's outstanding debts as of July 2017. The witness also indicated that Applicant owed \$345,000 on her mortgage, for which she did not believe Applicant was delinquent at the time of the bankruptcy petition, as she understood that Applicant was able to obtain a mortgage modification prior to the petition.³²

Applicant's bankruptcy petition reflected a total indebtedness of around \$420,000. After filing the initial petition, the witness subsequently submitted several amendments, the latest of which was in February 2018. The amended 60-month petition was pending confirmation before the bankruptcy court as of the date of the hearing, and the witness expected to amend the petition at least one more time to reflect the final amount of the IRS claim. The witness testified that Applicant had timely paid her bankruptcy plan payments of \$300 monthly since August 2017. Her payments may increase depending on the outcome of the IRS claim and regardless of her annual disposable income of \$132,470. As part of the bankruptcy case, Applicant is also required, and has also timely paid, her mortgage payments of \$1,934 monthly. If Applicant fails to do so, the mortgage company would file a motion for relief from stay with the bankruptcy court. If Applicant were delinquent and a claim were filed by the mortgage company, the witness would have to submit an amendment to the bankruptcy petition. As of the hearing, she was unaware of any such claim filed by the mortgage company. Applicant did not owe the witness any money as of the date of the hearing.³³

Policies

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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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

³¹ Tr. at 60-90; GE 8-10.

³² Tr. at 60-90; GE 8-10.

³³ Tr. at 60-90; GE 8-10.

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.”

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 the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 10865 provides that adverse 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out 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. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

(a) inability to satisfy debts;

(b) a history of not meeting financial obligations; and

(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 was unable to pay her debts, to include her taxes. The evidence is sufficient to raise AG ¶¶ 19(a), 19(b), and 19(f) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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 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;

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

Conditions beyond her control contributed to Applicant's financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that she acted responsibly under the circumstances. When she became delinquent on her mortgage, she attempted, though unsuccessfully to short sell her condominium. She also tried to get her HOA to repair her roof, which impeded her ability to sell her condominium. She succeeded in modifying her mortgage in January 2017, and was current on her payments as of the hearing date.

Applicant intended to use the proceeds from the short sale of her home to resolve her delinquent debts, to include her HOA dues. When the short sale fell through,

she made some payments on her delinquent debts in part with money she borrowed from her 401(k) and through a voluntary garnishment of her wages. She sought the assistance of a bankruptcy attorney, who tried to negotiate with her HOA. With the attorney's assistance, Applicant elected to address her delinquent debts by filing Chapter 13 bankruptcy. Since doing so and as of the date of the hearing, she was current on her plan payments of \$300 monthly.

However, Applicant did not consult with the second tax preparer, to rectify her 2008 through 2011 tax returns that resulted in her owing back taxes, until March 2014. At that point, her income tax returns for tax year 2012 were already outstanding. In addition, when she hired a third tax professional to prepare her 2014 and 2015 income tax returns, she failed to notice that this individual indicated that these returns had been self-prepared. Such diligence on Applicant's part, having already been informed by the second tax preparer that the first tax professional made a similar error, would have likely alerted her to seek the assistance of another tax professional, thereby avoiding the \$32,000 tax debt for that tax year. AG ¶¶ 20(b) is therefore only partially applicable.

Applicant received financial counseling and assistance with resolving her delinquent debts, to include her back taxes, from the second tax preparer and her bankruptcy attorney. While the attorney noted that Applicant has timely paid her bankruptcy plan payments of \$300 monthly since August 2017, the plan was only recently confirmed in May 2018. As such, it is too soon to tell whether Applicant will be able to abide the 60-month payment plan as set forth by the court. AG ¶¶ 20(c) and 20(d) do not apply.

As of November 2016, IRS documentation reflects that Applicant owed a total of \$24,600 for tax years 2008, 2009 and 2011. She failed to provide documentation to corroborate her claim that her outstanding federal taxes for tax year 2008 was resolved through the interception of her federal and state tax refunds from tax years 2012, 2013, 2015, and 2016. She failed to provide documentation to corroborate her claim that she only owed around \$6,000 in federal taxes for tax years 2009, 2010, and 2011. Finally, she failed to provide documentation concerning the IRS response to her latest amendment for tax year 2014. As such, she failed to show that her tax liability of \$32,000 for that tax year was, in fact, reduced to \$10,000. While her bankruptcy was confirmed, Applicant failed to show what arrangements, if any, were made to resolve her outstanding federal taxes. AG ¶¶ 20(g) does not apply.

Applicant's finances are not under control. There is insufficient evidence to conclude that her financial problems are unlikely to recur. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

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 relevant 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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate the financial considerations security concerns.

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, 1.c - 1.i, 1.l - 1.o, 1.q - 1.s:	For Applicant
Subparagraphs 1.b, 1.j, 1.k, 1.p, 1.t:	Against Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge