



Applicant answered the SOR on June 24, 2017. She later requested a hearing before an administrative judge. The case was assigned to me on October 10, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 19, 2017. I convened the hearing as scheduled on November 15, 2017. The Government offered exhibits (GE) 1 through 6. Applicant objected to GE 2, and it was not admitted into evidence. GE 1, 3, 4, 5, and 6 were admitted into evidence. Applicant testified and offered Applicant Exhibits (AE) A through M. There were no objections, and they were admitted into evidence. DOHA received the hearing transcript on November 22, 2017.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old. She dropped out of high school in the 9<sup>th</sup> grade and later earned her General Equivalency Diploma. She earned a bachelor's degree in 2012 and a master's degree in engineering in 2016. She is currently working on a master's in business administration that is being funded by her current employer. She has three children ages 27, 25, and 17. She was married from 2002 to 2012 and has no children from the marriage.<sup>2</sup>

Applicant's youngest child, a daughter, lives at home. She does not receive child support. She will graduate from high school in December 2017 and is taking courses to become a nurse.<sup>3</sup>

Applicant has worked for her current employer, a federal contractor, since May 2016. Before then she was employed from November 2014 to August 2016, where she overlapped working the weekends for her current full-time employer. She was unemployed from July 2014 to November 2014; August 2012 to April 2013; September 2011 to January 2012; and February 2009 to November 2010. She was a full-time student from 2004 to 2016. She received scholarships, financial aid, and student loans to fund her education.<sup>4</sup>

In April 2012, after being laid off from work, Applicant filed for Chapter 13 bankruptcy protection (SOR ¶ 1.a). She received unemployment benefits for a period, but was unable to pay her rent and other bills. She paid a bankruptcy attorney \$300 or \$400 to file, and a payment plan was arranged, but she could not afford the payments because of her unemployment. In January 2013, the bankruptcy trustee dismissed the Chapter 13

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<sup>2</sup> Tr. 24-37.

<sup>3</sup> Tr. 24-37.

<sup>4</sup> Tr. 24-37; GE 1.

bankruptcy due to noncompliance. Applicant testified she paid about \$300 to \$400 into the plan.<sup>5</sup>

In February 2013, Applicant was employed in temporary jobs and contacted a different bankruptcy attorney, and he refiled a Chapter 13 bankruptcy. She discussed with him that she was working at temporary jobs, so her employment was unsteady. She testified they discussed filing bankruptcy under Chapter 7, and she was led to believe he was filing under Chapter 7. The attorney's fees for filing a Chapter 7 were \$1,400, and she was going to make installment payments on his fee. She later learned he had filed her bankruptcy under Chapter 13. She lost her temporary job, and the Chapter 13 was dismissed in May 2013, for failing to comply with the terms of the payment plan. Applicant admitted she was unfamiliar with the bankruptcy process. (SOR ¶ 1.b).<sup>6</sup>

The debts alleged in the SOR are supported by credit reports from June 2016, March 2017, and Applicant's admissions and testimony.<sup>7</sup> Applicant enrolled in a credit counseling service (CCS). After reviewing her monthly finances, it was determined that Applicant had approximately \$318 remaining at the end of the month. The CCS advised her not to pay small amounts on each of her debts, but rather attempt to save approximately \$3,500 and then make settlement offers she could afford. She began saving each month. The CCS has reviewed her credit report with her three times to help her manage her debts. She works with them over the phone. She also meets in person with an advisor from a non-profit credit counseling service, who is helping her manage her finances for long-term stability. She has taken financial management classes through CSS. She has learned how to budget and has a written budget. She works with both services, but after she received the SOR, she decided to attempt to settle her debts on her own. She does not pay for either service.<sup>8</sup>

Applicant purchased a used car in 2009. It stopped working, and it was voluntarily repossessed in 2013 (SOR ¶ 1.c-\$6,523). She did not have the money at the time to pay the deficiency owed on the debt. She attempted to settle the debt with the creditor, but it would not return her phone calls for a period. She made a settlement offer of \$2,500 to the creditor in August 2017, and at the time of the hearing, she was waiting for its response.<sup>9</sup>

Applicant disputed the amount of the debt owed in SOR ¶ 1.d. She testified that she completed the terms of a lease, but her landlord claimed she broke the lease and

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<sup>5</sup> Tr. 37-41; GE 5.

<sup>6</sup> Tr. 41-50; GE 6; AE A, B, L.

<sup>7</sup> GE 3, 4.

<sup>8</sup> Tr. 53-63; AE B, L.

<sup>9</sup> Tr. 50-53.

owed for other things. She settled the debt in September 2017, for \$1,600 and provided proof of payment.<sup>10</sup>

Applicant became sick in 2011, and she did not have medical insurance. The doctors could not determine the cause of her medical problems and she had numerous tests. In 2013, she changed doctors and had insurance. She had surgery in 2014. The debts in SOR ¶¶ 1.e, 1.h, 1.i, 1.k, 1.l, 1.n, 1.o, 1.p, 1.q, 1.r, 1.t, 1.u and 1.v are medical debts. The debts in SOR ¶¶ 1.t and 1.u have been removed from Applicant's credit report after she contacted the hospital holding the claims. She completed financial forms and the debts were discounted. A law firm is collecting the debts in SOR ¶¶ 1.h, 1.i, 1.k, 1.l, 1.n, and 1.o. Applicant contacted the firm. She is attempting to negotiate a settlement amount on the aggregate of the debts. They remain unpaid.<sup>11</sup>

Applicant testified that she contacted the creditor for the debts in SOR ¶¶ 1.q and 1.r, and it agreed to accept a monthly payment of \$50. She provided proof that she has made two payments on these medical debts and is resolving them. She testified that she does not have an agreement with the creditor in SOR ¶ 1.p, but made a \$50 payment to start the process.<sup>12</sup>

Applicant is resolving the debt in SOR ¶ 1.f with regular \$50 payments. Applicant settled the debt in SOR ¶ 1.g with two payments in September and October 2017. She was waiting for the confirmation letter from the creditor. She settled the debt in SOR ¶ 1.j in October 2017. She received a settlement offer from the creditor in SOR ¶ 1.m, which is valid until the end of December 2017. She anticipated being able to pay the settlement in December.<sup>13</sup>

Applicant credibly testified that she contacted the creditors for the debts in SOR ¶¶ 1.s and 1.w. Both told her that they did not have accounts in her name, and she has been unable to locate the current creditors. She provided a copy of the collection accounts from a consolidated credit report and these debts are not listed.<sup>14</sup>

Applicant testified that after she received the SOR, she contacted the creditors about the debts. Some she was aware of and others were brought to her attention through her background investigation. Some of the medical creditors agreed to settle her debts, other would not. She was attempting to pay the smallest debts first. She is currently earning an annual income of \$34,000 after taxes. She has researched and read financial advice about how to eliminate debt and make settlement offers to creditors. She is

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<sup>10</sup> Tr. 63-65; AE C.

<sup>11</sup> Tr. 65; AE F.

<sup>12</sup> Tr. 75-79; AE I, J.

<sup>13</sup> Tr. 80-92; AE E, G, H, M.

<sup>14</sup> Tr. 93-95; AE K.

enrolling her daughter in credit counseling, so she does not repeat Applicant's financial mistakes. Her daughter is working part time and pays for non-necessity items. Applicant is avoiding creating future debts. She has reduced her grocery bill and downgraded her telephone service and cable plan. Applicant is hoping that her earning potential will increase with a master's in business administration. She understands she has student loans that are deferred that will become due and is budgeting to ensure she will be current.<sup>15</sup>

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 an applicant may deliberately or inadvertently fail to safeguard classified information.

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<sup>15</sup> Tr. 29, 57-58, 75-109.

Such decisions entail a certain degree of legally permissible extrapolation as to 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 concern relating to the guideline 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. 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant’s delinquent debts began accumulating in about 2011, and she was unable to pay them. She filed Chapter 13 bankruptcy petitions twice, and they were dismissed in January 2013 and May 2013 for failure to make plan payments. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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; and

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

Applicant has debts that she is resolving and some remain unpaid. Her debts are recent and ongoing. AG ¶ 20(a) does not apply.

Applicant attributed her financial problems to unemployment, underemployment and medical issues. She is a single mother who does not receive child support. These conditions were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. After receiving the SOR, Applicant began participating in credit counseling so she could resolve her debts. She was told to save her money until she accumulated a sufficient amount and then negotiate settlements. After receiving the SOR, she decided to attempt to resolve her delinquent debts. She has made progress in doing so, but still has debts remaining to be resolved. Twice Applicant attempted to resolve her debts through bankruptcy. Despite having temporary jobs, her attorneys filed for her under Chapter 13, resulting in dismissal due to nonpayment because she lost her job. Applicant credibly testified she believed in one instance that the attorney was supposed to file for her under Chapter 7, which did not occur. I find that under the circumstances she has acted responsibly by paying some of her delinquent debts and has plans to resolve the remaining ones. AG ¶ 20(b) applies.

Applicant has been receiving financial counseling from two services. She does not pay for their services. She has a budget. She has paid some of the debts and is making payments on others. She has reduced her monthly expenses to expedite repayment of the remaining debts. There are clear indications her financial problems are being resolved and under control. AG ¶ 20(c) applies. Applicant provided evidence that she has initiated good-faith efforts to repay some overdue creditors and resolve her debts. Not all of her debts are resolved, but she is making progress based on her resources. AG ¶ 20(d) applies.

## 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), 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of 'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2 (a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a



time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>16</sup>

Applicant is 42 years old. She has three children, one of whom lives with her. Despite dropping out of high school in the 9<sup>th</sup> grade, she has earned two college degrees and is working on a third. For many years, she was underemployed and had significant periods of unemployment. She recognizes the importance of being financially reliable for her future stability. She has been receiving financial counseling and has systematically been reducing her delinquent debts. Some of her debts are resolved. Others have not yet been resolved. I am convinced that Applicant understands the importance of remaining committed to resolving these debts for both her financial future and for future career opportunities. Although her financial track record is not stellar, she has reduced her expenses and is making progress. Applicant's initiative and commitment convince me that she will continue to pay her remaining delinquent debts. The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations.

### **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.w: For Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge

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<sup>16</sup>ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).