



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



In the matter of: )  
 )  
 --- ) ISCR Case No. 15-01326  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: *Pro se*

05/17/2016

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is granted.

**Statement of the Case**

On August 8, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.<sup>1</sup> On August 22, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial

<sup>1</sup> GE 1 (e-QIP, dated August 8, 2012).

Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

There is some confusion as to when Applicant received the SOR, for she signed a receipt for the SOR on September 31, 2015. The confusion arose because her response to the SOR was notarized with a date of September 16, 2015, two weeks before she supposedly received the SOR. In her answer to the SOR allegations, Applicant requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on October 19, 2015. The case was assigned to me on October 26, 2015. A Notice of Hearing was issued on October 28, 2015. I convened the hearing as scheduled on November 18, 2015.

During the hearing, four Government exhibits (GE 1 through GE 4) and ten Applicant exhibits (AE A through AE J) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on November 25, 2015. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. She timely submitted a number of documents, which were marked as Applicant exhibits (AE) K through AE Y and admitted into evidence without objection. The record closed on December 10, 2015.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted with explanations a majority of the factual allegations pertaining to financial considerations in the SOR (¶¶ 1.a. through 1.c., 1.e. through 1.q., 1.t. through 1.dd., 1.oo., and 1.pp.). She denied the remaining allegations, also with explanations. Applicant's answers are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 56-year-old employee of a defense contractor. She has been a structural designer since July 2012.<sup>2</sup> A 1977 high school graduate,<sup>3</sup> Applicant received bachelor of science degrees in 1986 and 2008, a master of science degree in 2013, and a doctor of philosophy degree in 2015.<sup>4</sup> She was commissioned in the Army National Guard in January 1982, and served honorably until she was released in March 1986, when she resigned her commission and enlisted in the U.S. Coast Guard. Applicant retired honorably in the grade of chief petty officer (E-7) in April 2001.<sup>5</sup> She has never held a security clearance, but apparently was processed for a secret security clearance

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<sup>2</sup> Tr. at 36, 83.

<sup>3</sup> Tr. at 83.

<sup>4</sup> Tr. at 5.

<sup>5</sup> GE 1, *supra* note 1, at 19-20; AE O (Certificate of Release or Discharge from Active Duty (DD Form 214), dated April 18, 2001). Applicant was determined by the U.S. Department of Veterans Affairs to be entitled to a service-connected disability of at least 30 percent or more. AE X (Letter, dated June 16, 2014(; Tr. at 38-39.

in 1988 or 1989.<sup>6</sup> Applicant was married in May 1987 and divorced in May 1995.<sup>7</sup> She has one son, born in 1987.<sup>8</sup>

### **Military Service**

During her military service, Applicant was awarded the Coast Guard Good Conduct Medal (five awards), the Coast Guard Unit Commendation Ribbon, the Humanitarian Service Medal, and the Secretary's Outstanding Unit Award Ribbon.<sup>9</sup>

### **Financial Considerations<sup>10</sup>**

It is unclear when Applicant's initial financial difficulties arose, but it appears that several factors contributed to them over a multi-year period: she assisted her mother in caring for her dying father until he died of cancer in 1994; she was divorced in 1995; she was required to pay her ex-husband child support despite the fact that their son continued to reside with her for five years; her ex-husband filed multiple complaints against her in different states seeking child support and other monies; he gave up custody of their son to the state, claiming Applicant was deceased; she was unemployed for three months in 2008 and again in 2012; she spent precious financial assets (commencing at a monthly rate of \$1,800 in July 2005, increasing to \$2,400 in March 2009, again to \$2,600, and ending at \$2,850 in June 2013, plus the cost of hospital visits, doctor visits, and medications) to pay for nursing home and assisted living care for her mother – disabled by Alzheimer's – after Medicare denied, then approved, and again denied, benefits, until her mother died in 2014; and she paid for her mother's funeral expenses using funds from her 401(k) retirement account. Applicant estimated the total cost to her for her mother's care since 2005 was over \$250,000.<sup>11</sup>

As a result of the expenses caused by the above factors, Applicant found it difficult to continue making routine monthly payments on her accounts. Student loan accounts, medical accounts, and a variety of other accounts became delinquent. Several judgments and a tax lien were filed, and her wages were garnished. In January

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<sup>6</sup> GE 1, *supra* note 1, at 37; GE 2 (Personal Subject Interview, dated October 4, 2012), at 2.

<sup>7</sup> GE 1, *supra* note 1, at 22.

<sup>8</sup> GE 1, *supra* note 1, at 31-31.

<sup>9</sup> AE O, *supra* note 5.

<sup>10</sup> General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 15, 2012); GE 4 (Equifax Credit Report, dated January 5, 2015); GE 2, *supra* note 6; GE 1, *supra* note 1, at 36-46. More recent information can be found in the exhibits furnished and individually identified.

<sup>11</sup> AE I (Letter, dated November 16, 2015); Applicant's Answer to the SOR, dated September 16, 2015, at 1; AE J (Assisted Living/Nursing Home Cost Ledger, undated). The combined cost for the retirement home, assisted living facility, and the nursing home was \$248,750.

2014 – a year and one-half before the SOR was issued – Applicant turned her attention to her financial morass. She contacted her creditors, disputed some accounts as not being hers, entered into some repayment agreements, and paid other accounts. Her student loans were consolidated and entered into the rehabilitation program.

The SOR identified 43 purportedly continuing delinquent accounts, totaling approximately \$88,638, which had been placed for collection, charged off, filed as liens or filed as judgments. Of the 43 accounts, 19 are student loans which are not identified by complete or even partial account numbers. Loans were churned: charged off and transferred to other servicing agents, or collection agents, repeatedly. The SOR refers to the U.S. Department of Education, and the National Student Loan Data System (referred to as NTLSTDNTLN), in addition to one school and one collection agent. In December 2015, the U.S. Department of Education (DOE) identified 21 student loans for Applicant, including direct consolidated unsubsidized, direct consolidated subsidized, Stafford subsidized, and National Direct Student Loans, specifying loan dates and amounts. Five of the identified student loans no longer have a balance as a result of Applicant's repayment efforts.<sup>12</sup> Applicant estimated that the combined total of her student loans was originally approximately \$48,000.

In August 2012, Applicant entered into a repayment agreement to pay a bi-weekly amount of \$150 towards her student loans, to commence in September 2012. However, at about the same time, the student loans were transferred to a collection agency, and in lieu of the payments, the collection agency garnished her wages at the bi-weekly rate of \$295.59. Between January and August 2015 alone, \$5,303.10 was garnished by that entity for the student loans. The amount garnished through the date of the SOR was approximately \$47,800 (SOR ¶ 1.oo.). There was another garnishment, in the amount of \$2,502, and it commenced in July 2013. Applicant estimated that her current student consolidated loan balance is \$15,000.<sup>13</sup> In September 2015, Applicant submitted a direct consolidation loan application and applied for an income-driven repayment plan. Her applications were accepted, and the remaining student loans were consolidated. The monthly payment was established at \$158.65.<sup>14</sup> Applicant's student loans (SOR ¶¶ 1.a – 1.c., 1.e. – 1.q., 1.aa., 1.cc., and 1.oo) appear either to have been resolved or they are in the process of being involved.

Of the 43 SOR-related accounts, 8 of those were medical accounts with unspecified medical providers. One account, with an unpaid balance of \$359.40 (SOR ¶ 1.r.), was paid in full in September 2015.<sup>15</sup> Another account, with an unpaid balance of \$327.52 (SOR ¶ 1.s.), was paid in full in September 2015.<sup>16</sup> Four accounts with unpaid

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<sup>12</sup> AE P (MyStudentData Download, dated December 7, 2015).

<sup>13</sup> AE B (Earnings Statement, dated September 4, 2015); Tr. at 35-36, 67.

<sup>14</sup> AE A (Direct Consolidation Loan Application, dated September 9, 2015); AE A (Letter, dated November 5, 2015); AE T (Student Loan Account Statement, dated November 14, 2015).

<sup>15</sup> AE F (Statement, dated September 11, 2015); Tr. at 51-52.

<sup>16</sup> AE H (Statement, dated September 14, 2015); Tr. at 52.

balances of \$295 (SOR ¶ 1.t.), \$168 (SOR ¶ 1.u.), \$145 (SOR ¶ 1.v.), and \$84 (SOR ¶ 1.y.), were resubmitted to Applicant's health insurance company for proper processing because Applicant was of the opinion that they should have been covered by her health insurance. She has not yet received a response to her submissions.<sup>17</sup> Two accounts, with unpaid balances of \$82 (SOR ¶ 1.z.) and \$42 (SOR ¶ 1.bb.), were paid in full in August 2015.<sup>18</sup> Applicant's medical accounts appear either to have been resolved or they are in the process of being involved.

There are three purportedly continuing delinquent accounts in various stages of resolution, as follows: a state income-tax lien with an unpaid balance of \$847 (SOR ¶ 1.dd.) for which Applicant entered into an installment agreement under which she agreed to have 17 monthly payments of \$50 automatically deducted from her bank account, commencing in October 2015;<sup>19</sup> and a judgment in the amount of \$1,779 for an account for furniture (SOR ¶ 1.ee.) for which a garnishment order was obtained and during the first eight months of 2015, \$1,594.57 was garnished from Applicant's wages, indicating the account was finally paid off.<sup>20</sup>

Additionally, there is a child-support arrearage which resulted in a judgment for \$11,250 (SOR ¶ 1.qq.) which started when Applicant's ex-husband sued her unsuccessfully in one state, then successfully in another state, he surrendered custody of their son to the state, claiming Applicant was dead, the garnishment of her wages, and her eventual success in obtaining a court order and having the arrearage removed, with the exception of one small state fee owed of \$29.30, which was also paid off in December 2010.<sup>21</sup> Those three accounts appear either to have been resolved or they are in the process of being involved.

Applicant has several accounts that had either already been resolved or the circumstances of the account were so unusual that they should be considered resolved. There is an automobile loan with a high credit of \$4,035 and an unpaid and past-due balance of \$4,418 that was charged off (SOR ¶ 1.d.) when Applicant continued to make her routine monthly payments to the automobile dealer who sold the loan to another company. Neither company informed Applicant of the transfer, and her payments were never forwarded. The dealer went out of business. Applicant has been in discussions with a representative of the successor company, and they are trying to come to some

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<sup>17</sup> Tr. at 53-55; Applicant's Answer to the SOR, *supra* note 11, at 5.

<sup>18</sup> AE S (Receipt of Payment, dated August 29, 2015); AE R (Receipt of Payment, dated August 29, 2015); Applicant's Answer to the SOR, *supra* note 11, at 5; Tr. at 56-57.

<sup>19</sup> AE U (Installment Payment Agreement, dated September 30, 2015); Applicant's Answer to the SOR, *supra* note 11, at 6; Tr. at 57-58.

<sup>20</sup> Applicant's Answer to the SOR, *supra* note 11, at 6; AE B, *supra* note 13; Tr. at 58.

<sup>21</sup> AE G (Payment Record Letter, dated November 17, 2010); AE M (Credit Report Extract, undated); AE N (Credit Report Extract, undated); Applicant's Answer to the SOR, *supra* note 11, at 7; Tr. at 39-44. The arrearage arose when Applicant was sending her payments to her ex-husband, but he refused her letters, instead returning them to her unopened. She set up a trust in the name of her son and made the payments to it. When the judgment was filed, Applicant started making additional monthly payments to her ex-husband until the matter was resolved.

resolution. Applicant still has physical possession of the vehicle, but does not hold the title.<sup>22</sup> There is an electric utility bill with an unpaid amount of \$129 (SOR ¶ 1.w.) that remained when Applicant moved. She made arrangements to pay the bill in September 2015 and did so.<sup>23</sup> She claims that the listing is no longer on her current credit report.<sup>24</sup> There is a judgment against Applicant for \$1,900 (SOR ¶ 1.ff.) which arose from her son's purchase of a used vehicle (Applicant did not co-sign the note) that had a defective transmission. Her son refused to pay for the defective vehicle and the private seller chose to sue Applicant. Applicant contends her son is currently making payments to the seller.<sup>25</sup> There is a municipal camera-generated vehicle ticket received by Applicant's son when he was operating her vehicle in the amount of \$70 (SOR ¶ 1.nn.). Applicant paid the ticket because her son is unemployed.<sup>26</sup> She claims that the listing is no longer on her current credit report.<sup>27</sup> There is one common issue regarding these four accounts. While Applicant contended there were discussions with the creditors, repayment arrangements, or payments, she failed to submit any documentation to support her contentions. Accordingly, while she may have paid some of the accounts in full, and she and her son made payments on the other accounts, it is difficult to find that the accounts have been resolved. They appear to be in the process of being resolved.

There are several accounts which Applicant has disputed with the credit-reporting agencies contending that they are either not her accounts or the reports are incorrect regarding status or amount remaining unpaid. There is a credit card issued by a department store with a high credit of \$695 and an unpaid and past-due balance of \$927 (SOR ¶ 1.gg.) that was transferred to a collection agent. Applicant's position regarding the account has evolved from initially claiming that she paid the account in 2007 to eventually claiming that she never had an account with that particular creditor. She disputed the entry with a credit-reporting agency in September 2015.<sup>28</sup> She contends the dispute was successful and that the listing was removed from her credit report.<sup>29</sup> There are two credit-card accounts with past-due balances of \$889 (SOR ¶ 1.jj.) and \$2,385 (SOR ¶ 1.kk.) that were transferred or sold to a debt purchaser. Applicant contends she never had credit cards with either of the two identified creditors. She disputed the entries with a credit-reporting agency in September 2015.<sup>30</sup> She

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<sup>22</sup> Tr. at 67-71; Applicant's Answer to the SOR, *supra* note 11, at 1-2.

<sup>23</sup> Applicant's Answer to the SOR, *supra* note 11, at 5; Tr. at 54.

<sup>24</sup> AE K (E-mail, dated December 9, 2015).

<sup>25</sup> Applicant's Answer to the SOR, *supra* note 11, at 6; Tr. at 59-60.

<sup>26</sup> Applicant's Answer to the SOR, *supra* note 11, at 7; Tr. at 66.

<sup>27</sup> AE K, *supra* note 24.

<sup>28</sup> Applicant's Answer to the SOR, *supra* note 11, at 6; Tr. at 60; AE C (Dispute Letter, dated September 11, 2015).

<sup>29</sup> AE K, *supra* note 24.

<sup>30</sup> Applicant's Answer to the SOR, *supra* note 11, at 6; Tr. at 64; AE E (Dispute Letter, dated September 11, 2015).

contends that the disputes were successful and the listings were removed from her credit report.<sup>31</sup> There is a cellular-telephone account with an unpaid and past-due balance of \$1,139 (SOR ¶ 1.ii.). Applicant claims that while she had one account, she paid it off when she switched carriers, but this listing refers to a second account with the same creditor. She disputed the entry with a credit-reporting agency in September 2015.<sup>32</sup> She contends the dispute was successful and that the listing was removed from her credit report.<sup>33</sup> There are two separate utility accounts with the same creditor with unpaid and past-due balances of \$658 (SOR ¶ 1.ii.) and \$81 (SOR ¶ 1.mm.) that were charged off. Applicant contends that before she moved out of the residence, she called the utility to settle her final bill, and that any subsequent charges are not her responsibility but the responsibility of the subsequent tenant. She disputed the entry with a credit-reporting agency in September 2015.<sup>34</sup> She contends the disputes were successful and that the listings were removed from her credit report.<sup>35</sup> There is one common issue regarding these six accounts. While Applicant contended her disputes were successful and the listings were removed from her credit report, she failed to submit any documentation to support her contentions. Accordingly, while she may have successfully disputed the accounts, it is difficult to find that the accounts have been removed from her credit report or that they have been resolved. Nevertheless, they appear to be in the process of being resolved.

There is another purportedly delinquent account related to the purchase of a used vehicle with a high credit of \$12,527. She had made two payments before the car failed. Applicant was driving the vehicle when it stopped. It was supposedly repaired by the seller, but it again stopped, this time on the interstate highway. Since it was not in a safe or operable condition, she told the seller that she wanted a refund and no longer wanted the vehicle. The vehicle was reported as having been repossessed. The account was transferred or sold to another company, and the unpaid balance and past-due balance was reported as \$12,336 (SOR ¶ 1.hh.). In 2008, having engaged the professional services of an attorney, Applicant filed a lawsuit against the successor creditor. The matter has not yet been resolved because the creditor has employed some delaying tactics by failing to appear in court on numerous occasions.<sup>36</sup> Applicant failed to submit any documentation to support her contentions related to the account.

In November or December 2015, Applicant started working with a certified financial counselor in the military facility financial-readiness program. Some of their joint efforts resulted in successful disputes regarding some of the above-listed accounts.<sup>37</sup>

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<sup>31</sup> AE K, *supra* note 24.

<sup>32</sup> Applicant's Answer to the SOR, *supra* note 11, at 6; Tr. at 64; AE D (Dispute Letter, dated September 11, 2015).

<sup>33</sup> AE K, *supra* note 24.

<sup>34</sup> Applicant's Answer to the SOR, *supra* note 11, at 6; Tr. at 64-66; AE E, *supra* note 30.

<sup>35</sup> AE K, *supra* note 24.

<sup>36</sup> Applicant's Answer to the SOR, *supra* note 11, at 6; Tr. at 61-63.

<sup>37</sup> AE K, *supra* note 24.

Although Applicant indicated she would submit a personal financial statement setting forth her net monthly income; her monthly household expenses; and her monthly debt payments, she failed to do so. In the absence of such information, I am unable to determine if she has any monthly remainder available for savings or spending. This makes it more difficult to determine if Applicant's finances are under control or if she is still experiencing financial difficulties. However, she did submit one earnings statement which indicated that during one two-week period in August 2015, her net pay was \$1,350.32 which, if extrapolated over a period of one year, would be approximately \$35,108.<sup>38</sup> She also is receiving her military retirement and disability income. She has no other delinquent accounts.

## Work Performance and Character References

Applicant's three most recent annual performance evaluations indicate that she consistently meets (the first two evaluations) or frequently exceeds (the most current evaluation) all goals.<sup>39</sup> Her supervisor said that Applicant has demonstrated an exceptional work ethic, and noted that she is "passionate about community service as she consistently participates and volunteers with various organizations throughout the [local] community."<sup>40</sup> A co-worker characterized Applicant's work ethic as exemplary.<sup>41</sup> Applicant's landlord characterized her as a model tenant who is very responsible, reliable, and trustworthy.<sup>42</sup> Applicant is a trained member of the county emergency response team.<sup>43</sup>

## 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."<sup>44</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>45</sup>

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<sup>38</sup> AE B, *supra* note 13.

<sup>39</sup> AE W (Performance Evaluations, various dates).

<sup>40</sup> AE Y (Character Reference, dated December 30, 2015).

<sup>41</sup> AE Q (Character Reference, dated December 11, 2015).

<sup>42</sup> AE V (Character Reference, undated).

<sup>43</sup> AE L (Certificate, dated April 12, 2014).

<sup>44</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>45</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."<sup>46</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.<sup>47</sup>

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."<sup>48</sup>

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."<sup>49</sup> Thus, nothing

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<sup>46</sup> "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>47</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>48</sup> *Egan*, 484 U.S. at 531.

<sup>49</sup> See Exec. Or. 10865 § 7.

in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

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

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

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), a "history of not meeting financial obligations" may raise security concerns. Applicant's financial problems arose over a multi-year period, perhaps as early as 1994 or 1995. Student loans went into a default status, and medical bills and various other accounts, including child support, became delinquent. Accounts were placed for collection, charged off, or went to judgment. A tax lien was filed. A vehicle was repossessed. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Evidence that "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise

resolve debts.”<sup>50</sup> Under AG ¶ 20(e) it is potentially mitigating if “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.”

AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) apply. Applicant’s financial problems were not caused by her frivolous or irresponsible spending, and she did not spend beyond her means. Instead, those financial problems were largely beyond her control. She assisted her mother in caring for her dying father; she was divorced in 1995; her ex-husband’s actions and activities with respect to the custody of their son were costly; she was unemployed for three months in 2008 and again in 2012; she spent approximately \$250,000 to pay for nursing home and assisted-living care for her mother; and she paid for her mother’s funeral expenses.

Applicant prioritized her assets and financial responsibilities. While focused primarily on the welfare of her mother and her son, she did, nevertheless, manage to pay attention to her student loans in 2012 – three years before the SOR was issued. With limited assets remaining after her first two priorities, she attempted to address, first the student loans, and then the remaining accounts. The student loans were consolidated. Some creditors were unwilling to wait their turn, and they resorted to judgments and garnishments. Others worked with Applicant. Various accounts were paid off or otherwise resolved. Applicant filed disputes pertaining to some accounts, and, for the most part, the disputes were successful. A few accounts remain unresolved, but Applicant has indicated an intention to eventually resolve them.

In late 2015, Applicant reached out for guidance from a financial counselor. With no new delinquent accounts appearing in her credit reports, there are substantial indications that Applicant’s financial problems are finally under control. Applicant’s actions, under the circumstances confronting her, do not cast doubt on her current reliability, trustworthiness, or good judgment.<sup>51</sup>

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<sup>50</sup> The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good-faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) 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)).

<sup>51</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

## 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(a):

(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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>52</sup>

There is some evidence against mitigating Applicant's conduct. Applicant's student loans fell into a default status; various accounts became delinquent, were charged off, or became judgments; a vehicle was repossessed; a tax lien was filed; and her child support fell into arrearage. Her wages were garnished.

The mitigating evidence under the whole-person concept is more substantial. Applicant is a military veteran as well as a good and involved daughter and parent. She has an outstanding reputation in the workplace and in the community in which she has resided. Well before the SOR was issued, despite having very limited financial resources available, Applicant started addressing her delinquent accounts. She reached out to various creditors. Some agreed to repayment plans, and those accounts were resolved. Other accounts were resolved through garnishment. While Applicant failed to submit documentation to support some of her contentions, given her reputation for outstanding ethics, honesty, and trustworthiness, I have concluded that there are substantial indications that Applicant's financial problems are under control for there are no other delinquencies. Her actions under the circumstances confronting her do not cast doubt on her current reliability, trustworthiness, or good judgment.

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

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<sup>52</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “. . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>53</sup>

Applicant has demonstrated a “meaningful track record” of debt reduction and elimination efforts, and she started to do so years before the SOR was issued. This decision should serve as a warning that Applicant’s failure to continue her resolution efforts regarding her remaining delinquent accounts, or the creation of additional delinquent accounts, will adversely affect her future eligibility for a security clearance.<sup>54</sup>

Overall, the evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from her financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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<sup>53</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

<sup>54</sup> While this decision should serve as a warning to Applicant as security officials may continue to monitor her finances, this decision, including the warning, should not be interpreted as a conditional eligibility to hold a security clearance. The Government can re-validate Applicant’s financial status at any time through credit reports, investigation, and interrogatories. Approval of a security clearance now does not bar the Government from subsequently revoking it, if warranted. “The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance.” Nevertheless, the Defense Office of Hearings and Appeals (DOHA) has no authority to attach limiting conditions, such as an interim, conditional, or probationary status, to an applicant’s security clearance. See, e.g., ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006); ISCR Case No. 04-04302 at 5 (App. Bd. June 30, 2005); ISCR Case No. 03-17410 at 4 (App. Bd. Apr. 12, 2005); ISCR Case No. 99-0109 at 2 (App. Bd. Mar. 1, 2000).

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR and amended 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.qq: For Applicant

### **Conclusion**

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

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**ROBERT ROBINSON GALES**  
Administrative Judge