



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-04737

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: Matthew Potenza, Esq.

09/15/2015

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges two judgments totaling \$25,475. She satisfied one judgment in May 2014, and she has been making payments on the other judgment since June 2014. She provided sufficient evidence of her progress in resolving her financial problems. Financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 7, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (GE 1) On March 5, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F (financial considerations). (HE 2) The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with national interest to grant or continue Applicant’s access to classified

information and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (HE 2)

On March 23, 2015, Applicant responded to the SOR allegations and requested a hearing. (HE 3) On August 6, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice setting the hearing for August 25, 2015. On August 25, 2015, Applicant's hearing was held. Applicant received actual notice of the date, time and place of her hearing through communications with Department Counsel, and in any event, she waived her right to 15 days of notice of the date, time, and place of the hearing at her hearing. (Tr. 16-17) Department Counsel offered six exhibits into evidence, and Applicant offered 11 exhibits into evidence. (Tr. 11-17; GE 1-6; AE A-J) All exhibits were admitted into evidence without objection. (Tr. 12, 17-18) On September 1, 2015, DOHA received the transcript of the hearing. On September 4, 2015, one post-hearing document was received, which was admitted on September 14, 2015, without objection. (AE K) On September 4, 2015, the record closed.

### **Findings of Fact<sup>1</sup>**

In Applicant's SOR response, she admitted the debt in SOR ¶ 1.b, and said she had satisfied the debt in SOR ¶ 1.a. She also provided extenuating and mitigating information as part of her SOR response. Applicant's admissions are accepted as findings of fact.

Applicant is a 41-year-old administrative assistant. (Tr. 61-62) She has worked for the same employer or subsidiary employer for 12 years. (Tr. 47, 61) In 1996, she received a bachelor of art degree with a major in English and social work. (Tr. 61, 94) She has never served in the military. (GE 1) In 2002, she married, and she does not have any children. (Tr. 62)

Appellant's spouse was a manager of a department store from December 2004 to December 2009. (Tr. 21-22) In 2007, ownership of the store changed, and the new owners changed his working conditions; his hours significantly increased; and operational changes increased his employment stress and anxiety. (Tr. 22-24) He sought medical assistance, and he received a prescription for Xanax, an anti-anxiety medication. (Tr. 24; AE E) He was concerned that he might have a nervous breakdown or heart attack. (Tr. 26; AE E) He determined his health required him to quit his department-store employment. (Tr. 25-26) After he quit his department-store employment, his health improved, and he no longer felt anxious. (Tr. 27) From 2009 to 2011, he held part-time government employment. (Tr. 37) After 2011, his only employment was working at his and Applicant's bed and breakfast, and he began to receive \$1,542 monthly from social security. (Tr. 37-39) Applicant's husband has a judgment against him for about \$20,000; however, Applicant is not legally responsible for this debt. (Tr. 43)

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<sup>1</sup>Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

## Financial Considerations

Applicant's history of delinquent debt is documented in her SF 86, credit reports, SOR response, Office of Personnel Management personal subject interview (OPM PSI) and hearing transcript. Applicant's SOR alleges two judgments totaling \$25,475.

SOR ¶ 1.a alleges a judgment for \$8,023. The debt resulted from Applicant and her husband's failure to pay a credit card debt. In May 2011, the creditor obtained a garnishment order to address a judgment for \$8,790 plus interest. (SOR response) Under state law, the garnishment is limited to ten percent of the debtor's salary. (SOR response) Applicant's judgment was satisfied through garnishment in May 2014. (SOR response)

SOR ¶ 1.b alleges a judgment for \$17,452. The debt resulted when Applicant and her husband failed to pay a credit card debt. In July 2012, the creditor obtained a judgment for \$18,023. The creditor's court filing shows Applicant and her spouse paid \$1,647 before December 2014. (SOR response) In December 2014, the creditor obtained a garnishment order to address a debt for \$16,376 plus nine percent interest from October 2014. (SOR response) Under state law, the garnishment is limited to ten percent of the debtor's salary of about \$38,000. (SOR response) The garnishment began in January 2015. (SOR response) In addition to the garnishment, Applicant paid \$100 in August 2015. (Tr. 39, 60) The current balance owed is \$16,121; her monthly payment is \$319; and monthly principal reduction is \$177 after paying fees and interest. (AE L) At this rate of repayment, it will take about 42 months to pay this debt.

Applicant and her spouse's bed and breakfast investment damaged their finances. In 2003, Applicant and her spouse purchased some land, and in 2007, they began building their home using a construction loan. (Tr. 28, 50) They designed their home to function as a bed and breakfast. (Tr. 36) In 2008, a \$260,000 mortgage was used to pay off the construction loan. (Tr. 28, 49-50, 71-72) The cost of construction exceeded expectations and was about \$290,000. (Tr. 31, 51) When they started construction on the bed and breakfast in 2007, Applicant and her husband's federal adjusted gross income (AGI) was \$70,300, and they had excellent credit. (Tr. 36, 49; AE H) In 2008, their AGI was \$72,920. (AE I) In 2009, their AGI was \$47,175. (AE J) They used credit cards to finance some of the construction costs and costs for the bed and breakfast. (Tr. 31-32) The annual gross income for the bed and breakfast in 2014 was \$16,000. (Tr. 30, 73-74) They have not calculated their net or gross income for the bed and breakfast in 2015. (Tr. 74) In 2010, Applicant obtained an appraisal of their bed and breakfast, which estimated the value at \$242,000. (Tr. 34, 59, 80; AE F) In August 2015, the appraisal indicated the value was \$262,300, and the mortgage was \$223,000. (Tr. 79-81; AE G at 9) The mortgage and utilities on the bed and breakfast are current. (Tr. 60)

In 2009, Applicant and her husband had nine credit cards. (Tr. 63) Applicant had four or five credit cards, which were jointly or solely her responsibility. (Tr. 64) In 2009, the credit cards went into delinquent status. (Tr. 66) Two of her credit cards went to

judgment, and she received a release of liability on one credit card, as indicated in an Internal Revenue Service (IRS) form 1099. (Tr. 64-65) She did not make any payments on her one or two remaining delinquent credit card debts after 2009. She plans to address one of the credit card debts. (Tr. 92) She plans to assess her payment responsibilities when the current garnishment of her pay is completed. (Tr. 68)

In 2010, Applicant and her husband were advised by their lawyer that they should seek discharge of their debts under Chapter 7 of the Bankruptcy Code. (Tr. 54-56, 75-77) They chose not to utilize bankruptcy. (Tr. 57, 77)

Applicant and her spouse do not have any credit cards. (AE A) They have rejected offers for new credit cards. (Tr. 91) They own three cars that are over 10 years old, and there are no liens on them. (Tr. 33-34, 82)

Applicant received financial counseling. (Tr. 58, 84) Her budget indicates she and her husband have net monthly income of \$4,735, their monthly expenses are \$3,882; their \$2,118 mortgage expense for their residence and the bed and breakfast is the largest component of their monthly expenses; and their net monthly remainder is \$853. (AE A) Applicant noted that there are occasionally unexpected expenses; however, she generally has several hundred dollars remaining at the end of the month. (Tr. 85) Applicant's credit counseling company advised her to continue the payments through the garnishment and not to take action on her other delinquent debts. (Tr. 86)

### **Character Evidence**

Applicant has never been reprimanded, disciplined or received adverse counseling at work. (Tr. 87-88, 93) She has not been investigated for any security violations. (Tr. 87) She does not have any reportable criminal offenses, alcohol abuse, or drug offenses. (GE 1)

On July 23, 2015, the chairman and chief executive officer, senior vice president, and vice president of Applicant's company cosigned a letter supporting reinstatement of Applicant's security clearance. (AE D) They lauded her professionalism, conscientious compliance with rules, helpfulness, customer orientation, reliability, trustworthiness, and helpful and can-do attitude. (AE D)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

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

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

(internal citation omitted). Applicant's history of delinquent debt is documented in her SF 86, credit reports, SOR response, OPM PSI, and hearing transcript. Applicant's SOR alleges and the record establishes that two judgments totaling about \$25,000 were issued against Applicant, and her salary had been garnished since 2011. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>2</sup> and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant's conduct in resolving her debts warrants application of AG ¶¶ 20(a) through 20(c). Applicant's spouse quit his employment for health reasons, and Applicant and her husband underestimated the cost to build and expenses to run a bed and breakfast. Nationwide real estate prices declined after they had committed to the bed and breakfast enterprise. Applicant and her husband attempted to pay their mortgage and expenses for the bed and breakfast using funds from credit cards. She is financially unsophisticated, and she did not fully understand the risks and expenses of the bed and breakfast business.

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<sup>2</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)).

From 2011 to 2014, Applicant paid ten percent of her gross wages to the creditor in SOR ¶ 1.a, resolving this debt.<sup>3</sup> This payment was the maximum limit under state law for garnishing wages. Applicant's gross income was less than \$40,000 per year.

By December 2014, Applicant and her spouse had paid \$1,647 towards the debt in SOR ¶ 1.b. In December 2014, the creditor obtained a garnishment order to address the balance of the debt for \$16,376 plus nine percent interest from October 14, 2014. Applicant's annual salary over the previous four years was less than \$40,000. The garnishment began in January 2015. In addition to the garnishment, Applicant paid \$100 in August 2015. The current balance owed is \$16,121; her monthly payment is \$319; and monthly principal reduction is \$177 after paying fees and interest. At this rate of repayment, it will take about 42 months to pay off the debt in SOR ¶ 1.b.

A recent Appeal Board decision illustrates the analysis for applying AG ¶¶ 20(a) and 20(b) when an Applicant lacks the ability to pay debts. In ISCR Case No. 09-08533 (App. Bd. Oct. 6, 2010), the applicant had \$41,000 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. That applicant filed for bankruptcy the same month the Administrative Judge issued her decision. *Id.* at 1-2. The applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his payment of child support to her. The Appeal Board determined that AG ¶ 20(a) was "clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual's current reliability, trustworthiness, or good judgment)" even though that applicant's debts were unresolved at the time the Administrative Judge's decision was issued. *Id.* at 3. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence<sup>4</sup> of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4.

Similarly, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an applicant, who had been sporadically unemployed and lacked the ability to pay her creditors, noting that "it will be a long time at best before he has paid" all of her creditors. The applicant was living on

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<sup>3</sup>Of course, Applicant loses some mitigating credit because some debt payments were made through garnishment of her salary even though her opportunity to establish a payment plan was limited because of her limited income and other financial commitments. Payment of a debt "though garnishment rather than a voluntary effort diminishes its mitigating force." *Compare* ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010) *with* ISCR Case No. 04-07360 at 2-3 (App. Bd. Sept. 26, 2006) (payment of two of four debts through garnishment did not bar mitigation of financial considerations concerns). See also ISCR Case No. 09-05700 at 4 (App. Bd. Feb. 24, 2011) (garnished payments towards delinquent tax debts is not mitigating information in light of other factors); ISCR Case No. 08-06058 at 6 (App. Bd. Sep. 21, 2009) (remanding the case to the administrative judge and stating when addressing an Internal Revenue Service garnishment, "On its face, satisfaction of a debt through the involuntary establishment of a creditor's garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor.").

<sup>4</sup>Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government.

unemployment compensation at the time of her hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took “reasonable actions to effectuate that plan.” *Id.* The Appeal Board remanded the Administrative Judge’s decision because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the Administrative Judge did “not explain[] what he believes that applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by applicant was not ‘responsible’ in light of his limited circumstances.” *Id.*

Applicant’s delinquent debts “occurred under such circumstances that [are] unlikely to recur and [do] not cast doubt on the [her] current reliability, trustworthiness, or good judgment.” Applicant’s husband had medical problems and quit his job, and they lacked the income to pay their debts. The real estate decline was the largest in decades. There are unusual circumstances that caused her delinquent debt. She acted responsibly under the circumstances by maintaining contact with her creditors,<sup>5</sup> making payments and bringing her debts to current status. She received financial counseling, there are clear indications that the problem is being resolved or is under control.

The statute of limitations for credit card debt in Applicant’s state is at most six years.<sup>6</sup> The state statute of limitations requires a breach of contract or other

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<sup>5</sup>“Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

<sup>6</sup>See Long Island Consumer Lawyer website, “What is the New York Statute of Limitations to Bring a Law Suit to Collect a Consumer Debt?”, (in New York the statute of limitations for a credit card debt is six years or less if the credit card company is headquartered in another state. For example, in Delaware, the statute of limitations for a debt incurred in New York would be Delaware’s three-year statute of limitations), <http://longislandconsumerlawyer.com/what-is-the-new-york-statute-of-limitations-to-bring-a-law-suit-to-collect-a-consumer-debt/>. See also New York Civil Court website, “Answering a Debt Collection Case”, <http://www.nycourts.gov/courts/nyc/civil/consumercredit.shtml> (stating same); See Lucy

enforcement action to be filed within six years of accrual. Breach of contract claims accrue at the time of the alleged breach, usually 30 days after the date of the most recent payment.

The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

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

*Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted). As a general statement, under the Appeal Board's jurisprudence, debts that are beyond the statute of limitations for collections cannot be mitigated solely because they are not collectable.<sup>7</sup> Applicant indicated she will not have the funds to pay her remaining one or two non-SOR delinquent credit card debts for about 42 months because of the garnishment of her pay. She said she intends to address one of the delinquent non-SOR credit card debts, and she did not address what she planned to do about the other non-SOR credit card debt.<sup>8</sup>

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Lazarony, Bankrate website, "Statute of limitations on debts by state", <http://www.bankrate.com/finance/credit-cards/state-statutes-of-limitations-for-old-debts-1.aspx> (including state-by-state listing of statutes of limitations on various types of debts).

<sup>7</sup>The statute of limitations clearly and unequivocally ends an Applicant's legal responsibility to pay the creditor after the passage of a certain amount of time, as specified in state law. In a series of decisions the Appeal Board has rejected the statute of limitations for debts generated through contracts, which is the law in all 50 states, as automatically mitigating financial considerations concerns under AG ¶ 20(d). See ISCR Case No. 08-01122 at 4 (App. Bd. Feb. 9, 2009); ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008); ADP Case No. 07-13041 at 5 (App. Bd. Sep. 19, 2008); ISCR Case No. 07-11814 at 2 (App. Bd. Dec. 29, 2008) ADP Case No. 06-14616 at 3 (App. Bd. Oct. 18, 2007) (stating, "reliance upon legal defenses such as the statute of limitations does not necessarily demonstrate prudence, honesty, and reliability; therefore, such reliance is of diminished probative value in resolving trustworthiness concerns arising out of financial problems. See, e.g., ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)."). This opinion does not assert that the statute of limitations provides any mitigation under Guideline F. The Appeal Board has not defined how long after the statute of limitations expires an Applicant must wait before receiving a fresh start similar to that received under Chapter 7 of the Bankruptcy Code.

<sup>8</sup>The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-

In sum, Applicant established that the unusual events that caused delinquent debt are unlikely to recur. Her mortgage and several other ongoing expenses are current. Her track record of financial responsibility shows sufficient effort, good judgment, trustworthiness, and reliability to warrant mitigation of financial considerations concerns. Even if financial considerations are not mitigated under AG ¶¶ 20(a) through 20(c), they are mitigated under the whole-person concept, *infra*.

### **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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is a 41-year-old administrative assistant. She has worked for the same employer or subsidiary employer for 12 years. In 1996, she received a bachelor of art degree with a major in English and social work. The leadership of Applicant's company cosigned a letter supporting reinstatement of Applicant's security clearance. They lauded her professionalism, conscientious compliance with rules, helpfulness, customer orientation, reliability, trustworthiness, and helpful and can-do attitude. There is no evidence of disciplinary problems with her employer, illegal drug use, criminal offenses, or alcohol abuse.

In 2009, Applicant had financial problems because her husband had medical problems and quit his employment. They invested in a bed and breakfast and real estate prices significantly declined. They paid the mortgage and bed and breakfast expenses using credit cards, and the credit cards became delinquent. Two SOR creditors obtained judgments and garnished ten percent of Applicant's wages. One SOR debt was paid, and the other is being paid. Applicant has stable employment, and

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0012 at 3 (App. Bd. Dec. 1, 1999)). Applicant's February 1, 2013 credit report shows a track record of paying his debts.

her husband is receiving social security payments. Applicant received financial counseling, has a budget, and has a monthly remainder after expenses of several hundred dollars. There are clear indications that her financial problems will not recur, are being resolved, and are under control.

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

. . . 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 demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and 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.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Applicant understands what she needs to do to establish and maintain her financial responsibility. All of her debts are paid or being paid. Her efforts at debt resolution have established a "meaningful track record" of debt re-payment. I am confident she will maintain her financial responsibility.<sup>9</sup>

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<sup>9</sup>The Government has the option of following-up with more questions about Applicant's finances. The Government can re-validate Applicant's financial status at any time through credit reports, investigation, and interrogatories. Approval of a 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." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have "authority to grant an interim, conditional, or probationary clearance." 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. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, "The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems."). This footnote does not imply that this decision to grant Applicant's security clearance is conditional.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations concerns are mitigated, and eligibility for access to classified information is granted.

### **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 and 1.b: 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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Mark Harvey  
Administrative Judge