



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 13-01024

Appearances

For Government: Christopher Morin, Esquire, Department Counsel
For Applicant: Herman Watson, Jr., Esquire

03/24/2014

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 May 13, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On August 26, 2013, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued her a set of interrogatories. She responded to the interrogatories on September 13, 2013.² On October 25, 2013, the DOD 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*

¹ GE 1 ((SF 86), dated May 13, 2013).

² GE 2 (Applicant's Answers to Interrogatories, dated September 13, 2013).

(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 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.

Applicant received the SOR on November 6, 2013. In a sworn statement, dated November 22, 2013, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on December 20, 2013. The case was assigned to me on January 17, 2014. A Notice of Hearing was issued on February 3, 2014, and I convened the hearing, as scheduled, on February 26, 2014.

During the hearing, 4 Government exhibits (GE 1 through GE 4) and 25 Applicant exhibits (AE A through AE Y) were admitted into evidence without objection. Applicant and two other witnesses testified. The transcript (Tr.) was received on March 7, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. She submitted four additional documents, which were marked as exhibits (AE Z through AE CC) and admitted into evidence without objection. The record closed on March 7, 2014.

Findings of Fact

In her Answer to the SOR, Applicant admitted five of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.d., and 1.h.). Applicant's answers and explanations 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 59-year-old employee of a defense contractor, for which, since May 2013, she has served as a senior systems applications (SAP) and products enterprise resource planning (ERP) analyst. She was previously a customer service representative, a quality assurance analyst, process improvement and quality assurance, SAP production support, and competency center quality assurance support.³ Applicant was included in the National Aeronautics and Space Administration (NASA) contractor workforce layoff and was unemployed from May 2011 until May 2012.⁴ She never served in the U.S. military.⁵ She has never held a security clearance.⁶

³ GE 1, *supra* note 1, at 12-19.

⁴ GE 1, *supra* note 1, at 14-15, 36-46.

⁵ GE 1, *supra* note 1, at 20.

⁶ GE 1, *supra* note 1, at 32-33.

Applicant received an associate's degree in August 1986 and a bachelor's degree in December 1990.⁷ She has never been married.⁸

Financial Considerations

Applicant worked in support of NASA from 1985 until 2011, and by the time she was laid off in May 2011, she was earning approximately \$150,000 per year. In 2002, being financially secure in her job, she developed a life-long horse hobby into an equine breeding business as a sideline. She purchased several rental houses and built the facility on a ten and one-half acre site, stocked it with three stallions and several brood mares, and over the next several years, purchased additional adjacent land, purchased equipment, and hired employees. At one point, she had 55 horses in her facility. In 2006, Applicant expanded her operation with the intention of producing and selling an increased number of foals per year. The production doubled from 6 to 12 foals. The acreage was up to about 120 acres.⁹

There was nothing unusual about Applicant's finances until about 2007 – 2008, when “the bottom fell out of the economy” and people starting decreasing their expenditures on luxuries like hunt clubs and thoroughbreds.¹⁰ Renters were unable to continue making their monthly rental payments, and either moved out or were evicted. Her horses still had to eat and be maintained. During this period, while loading horses, Applicant was injured when she was “slam-dunked” into the ground, resulting in her requiring neck surgery and being somewhat incapacitated for seven or eight months.¹¹ Nevertheless, while the economy raised some financial issues, Applicant was able to handle her finances and pay her bills until shortly after she was laid off in May 2011.¹² Her monthly income was immediately reduced to \$1,000 in unemployment compensation. She contacted her banker, her accountant, and a bankruptcy attorney, and obtained a credit report.¹³ She immediately set about to avoid delinquencies, and by August 2011, Applicant had sold off 63 acres of her property and one of the rental houses. She was unable to sell her home, 32 acres, and the remaining three rental houses because an auction failed to materialize bids to cover the loans, so she refinanced where she could.¹⁴ She raised her insurance deductibles and dropped less critical policies to reduce her financial obligations. She sold all non-essential farm

⁷ GE 1, *supra* note 1, at 11-12.

⁸ GE 1, *supra* note 1, at 21-22.

⁹ Tr. at 27-32.

¹⁰ Tr. at 31.

¹¹ Tr. at 85.

¹² Tr. at 68.

¹³ Tr. at 54-56, 81.

¹⁴ Tr. at 68.

equipment and laid off two full-time and three part-time employees.¹⁵ Until she could secure another good job, she accepted a much lower paying job with an equine hospital about 70 miles away in another state, where she earned \$24,000 per year.¹⁶ By April or May 2012, Applicant had exhausted all of her assets. She had a minimal salary, was unable to sell horses because of market conditions, and could not address her remaining debts. As a result, accounts became delinquent, placed for collection, or were charged off. One real estate property was lost to foreclosure.

In September 2013, Applicant provided a personal financial statement reflecting a monthly net income of \$3,070.13; monthly household, business, utility, transportation, and food expenses of \$1,813; and monthly debt payments of \$983.50; leaving a monthly remainder of \$273.63 available for discretionary savings or expenditures.¹⁷ In addition to Applicant's net income, she noted that she generally judges four to six horse shows per year, averaging \$400 per day, and that she sells an occasional horse for between \$500 and \$3,500 per sale.¹⁸

The SOR identified eight delinquent debts totaling \$156,325 that had been placed for collection, charged off, or went to foreclosure, as generally reflected by a May 2013 credit report¹⁹ and an August 2013 credit report.²⁰ Some accounts listed in the credit reports have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in the credit reports, in some instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. Several accounts are listed with only partial account numbers. Those debts listed in the SOR and their respective current status, according to the credit reports, evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

(SOR ¶ 1.a.) There is bank home equity line of credit (also referred to as a second mortgage) with a credit limit of \$45,000 that was past due in the amount of \$44,384.²¹ Applicant managed to remain current on the account until May 2012.²² At some point in 2012, a modified loan schedule was adopted when the bank would not agree to refinance the account until the lender holding the first mortgage agreed to refinance the first mortgage.²³ Applicant continued to make her modified payments until

¹⁵ Applicant's Answer to the SOR, at 1; Tr. at 33-34.

¹⁶ Tr. at 34.

¹⁷ GE 2 (Personal Financial Statement, dated September 13, 2013).

¹⁸ GE 2 (Personal Financial Statement), *supra* note 17.

¹⁹ GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 17, 2013).

²⁰ GE 4 (Equifax Credit Report, dated August 23, 2013).

²¹ GE 2 (Loan Statement, undated); Tr. at 64.

²² Tr. at 38.

²³ Tr. at 39.

the refinance could occur. The original note matured and was discharged,²⁴ and on December 12, 2013, the bank refinanced the by-then \$45,502.72 loan. Under the terms of the new promissory note, Applicant is to pay \$377.85 per month until December 2028.²⁵ She is current on her new payments.²⁶ The account has been resolved.

(SOR ¶ 1.b.) There is a credit card account with a credit limit of \$16,000 and a past-due balance of \$3,399 that was placed for collection and charged off.²⁷ Applicant managed to remain current on the account until April or May 2012.²⁸ She attempted to work out a modified payment plan but the bank servicing the account refused to do so.²⁹ In January 2014, a new collection agency agreed to a settlement. Applicant paid the agreed settlement of \$1,700 in January 2014, and the account was considered paid off.³⁰ The account has been resolved.

(SOR ¶ 1.c.) There is bank unsecured line of credit with a credit limit of \$10,000 that was initially past due in the amount of \$1,648, and charged off in January 2013.³¹ Applicant managed to remain current on the account until April or May 2012.³² She attempted to renegotiate a new payment schedule, but her efforts were refused.³³ Once she obtained her new position, she approached the collection agent, and they offered to settle the account for \$6,882.88, but she was unable to make a lump-sum payment of that amount.³⁴ She subsequently contacted the next collection agent, and in January 2014, a new settlement was offered, in the amount of \$5,407.97, and a repayment plan was approved.³⁵ Under the terms of the repayment agreement, Applicant made an initial electronic debit payment of \$901.27, plus a \$8.95 processing fee, on January 31, 2014.³⁶ The second payment was made two days after the hearing, and the final

²⁴ AE J (Letter, dated December 24, 2013); AE K (Discharge of Mortgage, dated December 24, 2013).

²⁵ AE M (Promissory Note, dated December 12, 2013); AE A (Truth-In-Lending Disclosure Statement for Real Estate and Residential Loans, dated November 8, 2013); AE L (Mortgage, dated December 12, 2013); Tr. at 36, 41, 66.

²⁶ Tr. at 40.

²⁷ GE 4, *supra* note 20, at 7; AE B (Letter, undated); Tr. at 42.

²⁸ Tr. at 75.

²⁹ Tr. at 75.

³⁰ AE N (Letter, dated February 20, 2014); Tr. at 42-43, 75.

³¹ GE 3, *supra* note 19, at 18.

³² Tr. at 76.

³³ Tr. at 43.

³⁴ Tr. at 76-77; AE C (Settlement Offer, dated October 15, 2013).

³⁵ Tr. at 77; AE O (Letter, dated February 4, 2014),

³⁶ Tr. at 44, 77-78; AE Q (Letter, dated January 22, 2014; AE P (Letter, dated February 4, 2014); AE O, *supra* note 35. Although AE Q refers to a monthly payment of \$910.27, AE P indicates the amount is \$901, and AE O indicates it is \$901.32. It appears that the figure in AE Q was incorrectly entered.

payment is expected to be made on June 30, 2014.³⁷ The account is in the process of being resolved.

(SOR ¶ 1.d.) There is a home mortgage account on Applicant's residence with a high credit of \$292,000, and an unpaid balance of \$242,952, that was past due in the amount of \$19,271.³⁸ Applicant approached the lender and entered into a Home Affordable Unemployment Program (HAUP) under which she made modified loan payments (\$355.88 per month) for a year.³⁹ In October 2013, Applicant entered into the Home Affordable Modification Trial Period Plan under which her monthly payments increased to \$453.13.⁴⁰ In January 2014, she was enrolled into the Home Affordable Modification Program (HAMP), and the loan agreement was automatically modified, effective March 1, 2014.⁴¹ The account has been resolved.

(SOR ¶ 1.e.) There is a home mortgage account on one of Applicant's rental properties with a high credit of \$54,400 that became past due and was placed for collection.⁴² When Applicant had insufficient income to maintain the mortgage payments and was unable to rent the property, she agreed to relinquish the deed to the lender in lieu of foreclosure. The title transfer occurred in October 2012.⁴³ A Form 1099-C (Cancellation of Debt) was issued in January 2013, reflecting the amount of the debt discharged was \$50,679.77.⁴⁴ Although the Warranty Deed clearly states that the parties agreed on the amount of the indebtedness (\$55,392.47, including principal, interest, and expenses) that was to be credited to Applicant for the conveyance of the title,⁴⁵ the lender mistakenly reported to the credit reporting agencies that there was a \$13,315 deficiency balance still owed by Applicant.⁴⁶ According to the senior credit officer at the lender, "once the bank accepted the property deed-in-lieu of foreclosure, I believe the balance of the loan should have been satisfied. . . . We will work diligently to

³⁷ AE O, *supra* note 35.

³⁸ GE 3, *supra* note 19, at 6; GE 4, *supra* note 20, at 4; Tr. at 45.

³⁹ GE 2 (HAUP letter, dated March 27, 2012); Applicant's Answer to the SOR at 2).

⁴⁰ AE D (Letter, dated October 2, 2013).

⁴¹ AE R (HAMP Agreement, dated January 29, 2014).

⁴² GE 3, *supra* note 19, at 7.

⁴³ AE T (Warranty Deed, dated October 12, 2012); AE F (First Page of AE T, dated October 12, 2012); Applicant's Answer to the SOR, at 2; Tr. at 47-48.

⁴⁴ AE AA (Form 1099-C, dated January 18, 2013).

⁴⁵ AE T (Warranty Deed), *supra* note 43, at 1; AE T (Agreement, dated October 12, 2012) at 1; Tr. at 48-49.

⁴⁶ AE S (Letter, dated December 11, 2013); Tr. at 48; GE 3, *supra* note 37, at 7.

correct this mistake”⁴⁷ The balance is now reflected in a February 2014 Equifax credit report as zero.⁴⁸ The account has been resolved.

(SOR ¶ 1.f.) There is a home mortgage account on another of Applicant’s rental properties with a high credit of \$57,000 that became past due and was placed for collection.⁴⁹ When Applicant had insufficient income to maintain the mortgage payments and was unable to rent the property, she agreed to relinquish the deed to the lender in lieu of foreclosure. The title transfer occurred in October 2012.⁵⁰ A Form 1099-C was issued in January 2013, reflecting the amount of the debt discharged was \$53,099.15.⁵¹ Although the Warranty Deed clearly states that the parties agreed on the amount of the indebtedness (\$53,040.69, including principal, interest, and expenses) that was to be credited to Applicant for the conveyance of the title,⁵² the lender mistakenly reported to the credit reporting agencies that there was a \$10,799 deficiency balance still owed by Applicant.⁵³ According to the senior credit officer at the lender, “once the bank accepted the property deed-in-lieu of foreclosure; therefore, the balance of the loan should have been satisfied. . . . We will work diligently to correct this mistake”⁵⁴ The balance is now reflected in a February 2014 Equifax credit report as zero.⁵⁵ The account has been resolved.

(SOR ¶ 1.g.) There is a home mortgage account on another of Applicant’s rental properties with a high credit of \$45,000 that became past due and was placed for collection.⁵⁶ She explored a loan modification with the lender, but her efforts were rejected. Instead, the lender advised her that it was unable to work with her until she was two or three months behind in her payments.⁵⁷ Applicant made partial payments, but because they were not complete payments, they were not credited to her account.⁵⁸ When Applicant had insufficient income to maintain the mortgage payments and was unable to rent the property, she agreed to relinquish the deed to the lender as part of a

⁴⁷ AE S, *supra* note 46.

⁴⁸ AE Y Equifax Credit Report, dated February 12, 2014), at 3.

⁴⁹ GE 3, *supra* note 19, at 7.

⁵⁰ AE V (Warranty Deed, dated October 12, 2012); AE G (First Page of AE V, dated October 12, 2012); Applicant’s Answer to the SOR, at 2; Tr. at 48.

⁵¹ AE Z (Form 1099-C, dated January 18, 2013).

⁵² AE V (Warranty Deed), *supra* note 50, at 1; AE V (Agreement, dated October 12, 2012) at 1; Tr. at 48.

⁵³ AE U (Letter, dated December 11, 2013); AE BB (Letter, dated February 27, 2014); Tr. at 48-49; GE 3, *supra* note 37, at 7.

⁵⁴ AE BB, *supra* note 53.

⁵⁵ AE Y, *supra* note 48, at 3.

⁵⁶ GE 3, *supra* note 19, at 20.

⁵⁷ Tr. at 50.

⁵⁸ Tr. at 50.

foreclosure.⁵⁹ The title transfer occurred in April 2013 according to a Form 1099-A (Acquisition or Abandonment of Secured Property) that was issued that month, reflecting the amount of the debt discharged was \$42,222.79.⁶⁰ The February 2014 Equifax credit report reflects a zero balance.⁶¹ The account has been resolved.

(SOR ¶ 1.h.) There is a credit card account with a high credit of \$15,495 and a past due balance of \$10,187 that was placed for collection and charged off.⁶² She attempted to work out a modified payment plan but the bank servicing the account refused to do so.⁶³ Instead, Applicant was advised that she had to be in arrears for over two months before any agreements could be made. At the end of the period, the bank only informally agreed verbally to accept reduced payments until she could return to the full payment schedule.⁶⁴ She made a variety of payments, ranging from \$10 to \$50, with the most recent one made in February 2014.⁶⁵ Applicant's intention is to increase her monthly payments once she has satisfied the account set forth in SOR ¶ 1.c. The account is in the process of being resolved.

Character References

The president of the local bank first met Applicant through fox hunting, but subsequently assisted her in financing various real estate transactions over the years. They confer on a regular basis to discuss her liabilities and efforts to resolve her financial situation. On a couple of occasions they have discussed bankruptcy, but Applicant was "absolutely opposed to it."⁶⁶ He attributed that financial situation to two major factors. In the beginning of 2008, the entire economy deteriorated and Applicant's side business of raising very expensive thoroughbred horses was affected just like the rest of the luxury market - beach houses, country clubs, and other expensive hobby-type businesses. The other factor was her being laid off. Until the lay-off, he contends Applicant was "able to hold things together."⁶⁷ Applicant's general reputation in the community is that of being trustworthy, reliable, and diligent in her affairs.⁶⁸

⁵⁹ AE H (Demand For Possession, dated April 3, 2013).

⁶⁰ AE CC (Form 1099-A, dated April 3, 2013).

⁶¹ AE Y, *supra* note 48, at 3.

⁶² GE 3, *supra* note 19, at 7.

⁶³ Applicant's Answer to the SOR, at 2.

⁶⁴ Applicant's Answer to the SOR, at 2; Tr. at 53.

⁶⁵ AE E (Payment Confirmation, dated October 16, 2013); AE W (Payment Confirmations, dated January 21, 2014, and December 19, 2013); GE 2 (Payment Confirmation, dated August 26, 2013).

⁶⁶ Tr. at 88-91.

⁶⁷ Tr. at 89-90.

⁶⁸ Tr. at 91.

The retired dean of the college of liberal arts has known Applicant for nearly 40 years since Applicant first trained her and her horse for various horse shows. They are in the same circle of friends. Applicant has a strong reputation within the community for honesty and integrity.⁶⁹

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.”⁷⁰ 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.”⁷¹

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.”⁷² 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,

⁶⁹ Tr. at 97-99.

⁷⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁷¹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁷² “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 (4th Cir. 1994).

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.⁷³

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."⁷⁴

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."⁷⁵ 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 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. . . .

⁷³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁷⁴ *Egan*, 484 U.S. at 531

⁷⁵ See Exec. Or. 10865 § 7.

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. In about April or May 2012, Applicant found herself with little assets to continue making her routine monthly payments and various accounts became delinquent, and were placed for collection or charged off. One real estate property was lost to foreclosure. 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*.⁷⁶ In addition, 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 to resolve the issue*, AG ¶ 20(e) may apply.

AG ¶¶ 20(b), 20(c), 20(d), and 20(e) apply. AG ¶ 20(a) partially applies. The nature, frequency, and relative recency of Applicant's financial difficulties since 2012 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant's financial problems were not caused by frivolous or irresponsible spending, and she did not spend beyond her means. Instead, her financial problems were largely beyond Applicant's control. Commencing in about 2007 - 2008, Applicant started experiencing some financial difficulties when the bottom fell out of the economy and expenditures on luxury items like horses and hunt clubs started decreasing. In addition, she was injured and became somewhat incapacitated for seven or eight months. While

⁷⁶ 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 [or statute of limitations]) 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)).

those factors raised some financial issues, Applicant was able to handle her finances and pay her bills until another significant factor occurred: she was laid off in May 2011, and her monthly income plummeted to \$1,000 in unemployment compensation.

Applicant contacted her creditors, her banker, her accountant, and a bankruptcy attorney, and obtained a credit report. In an effort to avoid delinquencies, she reduced her financial obligations and sold off 63 acres of her property and one of the rental houses. She was unable to sell her home, 32 acres, and the remaining three rental houses because an auction failed to materialize bids to cover the loans, so she refinanced where she could. She raised her insurance deductibles and dropped less critical policies; sold all non-essential farm equipment; and laid off employees. She accepted a much lower paying job with an equine hospital about 70 miles away in another state, where she earned \$24,000 per year. By April or May 2012, Applicant had exhausted all of her assets. She had minimal salary, was unable to sell horses because of market conditions, and could not address her remaining debts. As a result, accounts became delinquent, placed for collection, or were charged off. One real estate property was lost to foreclosure.

She explored bankruptcy, but was opposed to it. Instead, Applicant acted responsibly by addressing her delinquent accounts, and working with her creditors.⁷⁷ With the assistance of her mortgage lenders, she refinanced her home mortgage under HAUP and HAMP, as well as her second mortgage, and both of those mortgages are now current. She relinquished the deeds to two rental properties to the mortgage lender in lieu of foreclosure, receiving Forms 1099-C in return, without incurring any deficiencies. She relinquished a deed to another rental property as part of a foreclosure, and received a Form 1099-A, without incurring a deficiency. With regard to AG ¶ 20(e), the credit reports reflected three deficiencies resulting from the two deed transfers in lieu of foreclosure, and the one actual foreclosure. Those reports were in error. The senior credit officer at the lender for two of the transactions acknowledged the error was caused by the lender, and there was no deficiency incurred, contrary to the allegations in the SOR. The foreclosure of the third rental property also was without any deficiency. Applicant paid off one credit card and is currently making agreed payments on another credit card, so those accounts are either resolved or in the process of being resolved. She entered into a repayment plan for her unsecured line of credit, and is making the agreed monthly payments on an account that should be resolved in June 2014. Applicant has resolved all of her non-SOR accounts, and is now current on all of her SOR accounts. With her current job, there are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting her, do not cast doubt on her current reliability, trustworthiness, or good judgment.⁷⁸

⁷⁷ "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.

⁷⁸ 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.⁷⁹

There is some evidence against mitigating Applicant's conduct. Her handling of her finances permitted a number of accounts to become delinquent. As a result, accounts were placed for collection or charged off. One rental property went to foreclosure.

The mitigating evidence under the whole-person concept is more substantial. Applicant's financial problems were not caused by frivolous or irresponsible spending, and she did not spend beyond her means. Rather, her problems were largely beyond Applicant's control. In about 2007 - 2008, the bottom fell out of the economy and expenditures on luxury items like horses and hunt clubs started decreasing, having an impact on her outside earnings. In addition, Applicant was injured and became somewhat incapacitated for seven or eight months. While Applicant started experiencing some financial difficulties when those events occurred, she was able to handle her finances and pay her bills. But, in May 2011, she was laid off, and her monthly income plummeted to \$1,000 in unemployment compensation. In an effort to avoid delinquencies, she reduced her financial obligations and, among other actions, sold off some real estate, sold all non-essential farm equipment, and laid off employees. She also accepted a much lower paying job which paid her \$24,000 per year. She managed to survive financially for another year, but by May 2012, all of her assets had been exhausted. Applicant eventually secured another, better-paying position, and she has paid off, settled, or otherwise resolved, or is in the process of resolving, all of her

⁷⁹ 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).

accounts, including non-SOR accounts and those accounts appearing in the SOR. There are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting her do not cast doubt on her current reliability, trustworthiness, or good judgment. The entire situation occurred under such circumstances that it is unlikely to recur.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁸⁰

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.

Applicant has demonstrated a "meaningful track record" of debt reduction and elimination efforts. 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).

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

⁸⁰ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	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.

ROBERT ROBINSON GALES
Administrative Judge