



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



In the matter of:)
)
 ---) ISCR Case No. 17-02491
)
 Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esquire, Department Counsel
For Applicant: *Pro se*

03/14/2019

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations and personal conduct. Eligibility for a security clearance is denied.

Statement of the Case

On October 24, 2005, and again on March 14, 2011, as well as on December 2, 2015, Applicant applied for a security clearance and submitted Electronic Questionnaires for Investigations Processing (e-QIP) versions of a Security Clearance Application. On August 4, 2017, the Defense Office of Hearings and Appeals (DOHA) issued her a set of interrogatories. Applicant responded to those interrogatories on November 6, 2017. On September 4, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, under Executive Order (Exec. Or.) 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 Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), for all covered individuals who require initial or

continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct) 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.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a sworn statement, dated September 27, 2018, Applicant responded to the SOR and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by DOHA on January 14, 2019, and she was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to her case. Applicant received the FORM on January 22, 2019. Applicant apparently chose not to respond to the FORM, for as of March 8, 2019, she had not done so. The case was assigned to me on March 8, 2019.

Findings of Fact

In her Answer to the SOR, Applicant admitted, with comments, all of the factual allegations pertaining to financial considerations in the SOR (SOR ¶¶ 1.a. through 1.n.), and the factual allegation pertaining to personal conduct in the SOR (SOR ¶ 2.a.). Applicant's admissions and comments 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 49-year-old employee of a defense contractor. She has been serving as a provisioning specialist with her current employer in three different geographical locations since April 2005. A 1987 high school graduate, Applicant attended a community college for three months in 2002, but she did not earn a degree. She enlisted in the U.S. Air Force in June 1987, and served on active duty until February 1996, when she was honorably discharged. She was first granted a secret clearance in 1987, and it was renewed in 2005. Applicant has never been married. She has two children, born in 1993 and 1995.

Financial Considerations¹

It is unclear when Applicant first started having financial difficulties, although in her 2005 e-QIP she identified some accounts that had been delinquent since 2001. Her December 2005 credit report also lists a number of delinquent accounts that became delinquent in 2001. Applicant identified only three factors that she attributed to her financial difficulties: she is the single mother of two children; she was unemployed for nearly a full year in 2001; and she has exhibited poor management and made poor financial decisions (including supporting a family that resided with her).² The record refers to one period of unemployment, starting in May 2001, and lasting until October 2001, as well as one period of under-employment with the state department of social and health services, providing day-care services, starting in October 2001, and lasting until August 2002. Applicant claimed to have either set up payment plans or intended to do so with several creditors or collection agents; claimed to be making monthly payments on some accounts; and intended to have all of her delinquent debts resolved by the end of 2006.³

In her December 2015 e-QIP, Applicant acknowledged only one continuing financial issue, identified as unpaid federal income tax for the tax year 2010, but indicated that she was working with the Internal Revenue Service (IRS) on a payment plan.⁴ Applicant apparently had insufficient funds to cover all of her monthly bills, and accounts became delinquent. Some accounts were charged off, and two judgments were filed against her. Applicant's wages were garnished in 2011, but it is unclear as to which creditor the garnishment was associated. Applicant also failed to timely file her federal income tax returns over a multi-year period, essentially claiming that she did so because she knew she owed tax because of insufficient withholding and insufficient funds to pay her 2010 taxes,⁵ and she now owes a substantial sum of unpaid taxes to the IRS.

¹ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 8 (Combined Experian and TransUnion Credit Report, dated December 1, 2005); Item 9 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 1, 2011); Item 10 (Combined Experian, TransUnion, and Equifax Credit Report, dated January 22, 2016); Item 11 (Equifax Credit Report, dated July 3, 2017); Item 12 (Equifax Credit Report, dated January 2, 2019); Item 7 (Enhanced Subject Interview, dated December 19, 2016); Item 4 (e-QIP, dated October 24, 2005); Item 5 (e-QIP, dated March 14, 2011); Item 6 (e-QIP, dated December 2, 2015); and Item 3 (Answer to SOR, dated September 27, 2018).

² Item 4, *supra* note 1, at 39; Item 3, *supra* note 1, at 4.

³ Item 4, *supra* note 1, at 35-40.

⁴ Item 6, *supra* note 1, at 30-32.

⁵ The legal requirement to file a federal income tax return is based upon an individual's gross income and other enumerated conditions. Once it is determined that there is an obligation to so file, the following applies:

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a

Applicant did not discuss the reasons for her subsequent failures to timely file her federal income tax returns for the tax years 2011 through 2015. There is no evidence that Applicant ever received financial counseling.

In addition to unfiled federal income tax returns covering the tax years 2010 through 2015; \$43,237 in unpaid taxes owed to the IRS; and a garnishment of \$3,989 in wages, the SOR identified seven delinquent accounts that had been placed for collection, charged off, or reduced to judgments as generally reflected by Applicant's five different credit reports. Those seven debts, total approximately \$2,690. There are also approximately one dozen delinquent debts that were not alleged in the SOR.⁶ Although Applicant has repeatedly promised that she would address her delinquent debts within certain stated time frames, she has offered little documentation to indicate that: she has contacted her creditors or collection agents to negotiate payment plans; established payment plans; made payments in an effort to resolve any delinquent debts; or actually paid off any of her debts. The sole exceptions were her entering into two installment agreements in 2013 and 2016 with the IRS with respect to her federal income taxes for the tax year 2010, and the cancellation of those agreements associated with Applicant's failures to remain in compliance with them, and her request to the IRS for tax transcripts covering the tax years 2010 through 2015, on November 7, 2017.⁷

Among the federal income tax returns that Applicant failed to timely file were: the income tax return for the tax year 2010, which was eventually filed in February 2012, for which there was an unpaid balance of approximately \$6,745, and only one payment was made for \$100 in June 2012 (SOR ¶¶ 1.a. and 1.f.);⁸ the income tax return for the tax year

misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year."

26 U.S.C. § 7203, *Willful failure to file return, supply information, or pay tax.*

⁶ Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board. (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3.). See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See *also* ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's unlisted and unalleged delinquent accounts will be considered only for the five purposes listed above.

⁷ Item 7 (Account Transcript (2010), dated November 7, 2017), at 2; Item 7 (Request for Transcript of Tax Return (Form 4506-T), dated November 6, 2017).

⁸ Item 7 (Account Transcript (2010), *supra* note 7).

2011, which was eventually filed in December 2015, for which there was an unpaid balance of approximately \$5,471, and only one payment was made for \$10 in April 2012 (SOR ¶¶ 1.b. and 1.f.);⁹ the income tax return for the tax year 2012, for which there was an unpaid balance of approximately \$9,058, and no evidence that the income tax return has yet been filed (SOR ¶¶ 1.c. and 1.f.);¹⁰ the income tax return for the tax year 2013, which was eventually filed in December 2015, for which there was an unpaid balance of approximately \$7,641, and only one payment was made for \$1 in April 2014 (SOR ¶¶ 1.d. and 1.f.);¹¹ the income tax return for the tax year 2014, which was eventually filed in December 2015, for which there was an unpaid balance of approximately \$14,323, and no evidence of any payments made (SOR ¶¶ 1.e. and 1.f.);¹² and the income tax return for the tax year 2015, which was eventually filed in September 2018, for which there was an unpaid balance of approximately \$3,520, and no evidence of any payments made (SOR ¶ 1.f.).¹³ Other than three miniscule payments totaling \$111 over the multi-year period, there is no evidence that other agreements have been made or that other payments, other than through garnishment, have been made by Applicant. While most of the federal income tax returns were eventually filed, Applicant still owes a substantial sum to the IRS. These accounts have not been resolved, and there is little evidence that they will soon be in the process of being resolved.

In addition to the unpaid federal income taxes, the SOR listed seven delinquent accounts. Those debts, none of which have been addressed or resolved by Applicant since her December 2016 interview with an investigator with the U.S. Office of Personnel Management (OPM), or since her SOR was issued in September 2018, are described as follows: a charge account with an unpaid balance of \$904 that was charged off (SOR ¶ 1.g.); an unspecified type of account with an unpaid balance of \$436 that was purchased from the original creditor (SOR ¶ 1.h.); a cable television or Internet account with an unpaid balance of \$305 (SOR ¶ 1.i.); a cellular telephone account with an unpaid balance of \$239 (SOR ¶ 1.j.); a medical account with an unpaid balance of \$74 (SOR ¶ 1.k.); an unspecified type of account with an unpaid balance that was reduced to a judgment for \$149 (SOR ¶ 1.l.); and an apartment lease with an unpaid balance that was reduced to a judgment for \$583 in 2009 (SOR ¶ 2.m.).

It is not known what Applicant's current financial resources may be because she did not report her current net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. There is no evidence of a budget. Although Applicant noted that her children are now grown, and they no longer rely on her as much, and that she is currently in a better position to be able to

⁹ Item 7 (Account Transcript (2011), dated November 7, 2017).

¹⁰ Item 7 (Account Transcript (2012), dated November 7, 2017).

¹¹ Item 7 (Account Transcript (2013), dated November 7, 2017).

¹² Item 7 (Account Transcript (2014), dated November 7, 2017).

¹³ Item 3 (Statement from Accountant, dated October 1, 2018).

start resolving all of her current indebtedness,¹⁴ she offered no evidence to indicate that her financial situation is now under control.

Personal Conduct

In 2011, although there were continuing financial issues from 2005, Applicant lacked candor, and in her 2011 e-QIP, she denied any such issues. Her failure in this regard is unalleged conduct, as it was not alleged in the SOR.

On December 2, 2015, when Applicant completed her e-QIP, she responded to certain questions pertaining to her financial record found in Section 26. Some of those questions asked if, in the past seven years, she had defaulted on any type of loan; had bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; and been over 120 days delinquent on any debt not previously entered; as well as if she is currently over 120 days delinquent on any debt? Applicant answered “no” to all of those questions, and certified that her responses were “true, complete, and correct” to the best of her knowledge and belief.¹⁵ In fact, her answers were incorrect, for Applicant actually had delinquent accounts that clearly came within the scope of the questions asked.

There was one other question in Section 26 that could have been cited in the SOR, but for some reason it was not specifically cited: In the past seven years did she have a judgment entered against her? Applicant also answered “no” to that question.¹⁶ In her Answer to the SOR, Applicant admitted that she had deliberately falsified the material facts in her responses to the e-QIP inquiries, although she modified that admission by claiming she misunderstood the question and was answering it based on her credit report at the time. Nevertheless, even though she claimed to now understand the question, she admitted that she did falsify material facts.¹⁷

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.”¹⁸ As Commander in Chief, the President has

¹⁴ It should be noted that 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. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

¹⁵ Item 6, *supra* note 1, at 31-32.

¹⁶ Item 6, *supra* note 1, at 31.

¹⁷ Item 3, *supra* note 1, at 3, 5.

¹⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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.”¹⁹

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines 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.”²⁰ 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.²¹

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

¹⁹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

²⁰ “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).

²¹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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.”²²

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.”²³ 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 to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and

²² *Egan*, 484 U.S. at 531.

²³ See Exec. Or. 10865 § 7.

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant had seven delinquent accounts, totaling approximately \$2,690, placed for collection, charged off, or reduced to judgments; she failed to timely file federal income tax returns for the tax years 2010 through 2015; and she has unpaid federal income tax, totaling approximately \$43,237. Those delinquent accounts and unpaid federal income taxes remain unaddressed and delinquent. The failure to timely file income tax returns has security implications because:²⁴

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns*. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

The Appeal Board clarified that even in instances where an “[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant’s security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility” including a failure to timely file federal income tax returns.²⁵ In this instance, while Applicant eventually filed her late federal income tax returns for several years, and she may now be properly motivated, she waited nearly one year after she was interviewed by the OPM investigator to obtain information regarding her unpaid taxes; and did not file her 2015 federal income tax return until three weeks after the SOR was issued. There is still no evidence that her 2012 federal income tax return has been filed. AG ¶¶ 19(a), 19(c), and 19(f) have been established. As there is no evidence that

²⁴ ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

²⁵ See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an Applicant’s course of conduct and employing an “all’s well that ends well” analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

Applicant was unwilling to satisfy her debts regardless of the ability to do so, AG ¶ 19(b) has not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

(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;²⁶

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;²⁷

(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; and

²⁶ A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

²⁷ 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)).

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(b) minimally applies, but none of the remaining mitigating conditions apply. The nature, frequency, and recency of Applicant's continuing financial difficulties make it difficult to conclude that it occurred "so long ago" or "was so infrequent," or that it is "unlikely to recur." Applicant identified only three factors that she attributed to her financial difficulties: she is the single mother of two children; she was unemployed for nearly a full year in 2001; and she has exhibited poor management and made poor financial decisions (including supporting a family that resided with her). The record refers to one five-month period of unemployment in 2001, as well as one ten-month period of under-employment in 2001-2002. Applicant has had 18 years to resolve her financial issues, but with the exception of one garnishment in the amount of \$3,989, three minimal income tax payments, totaling \$111, and two aborted attempts to comply with installment agreements with the IRS, her resolution efforts have been non-existent.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient. In this instance, to date, there is little evidence that any corrective actions have been taken by Applicant. There is no evidence to conclude that Applicant's finances are under control. Applicant's actions under the circumstances continue to cast doubt on her current reliability, trustworthiness, and good judgment.²⁸

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in

²⁸ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes a condition that could raise security concerns under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

As noted above, in December 2015, when Applicant completed her e-QIP, she responded to certain questions pertaining to her finances found in Section 26. Some of those questions asked if, in the past seven years, she had defaulted on any type of loan; had bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; and been over 120 days delinquent on any debt not previously entered; as well as if she is currently over 120 days delinquent on any debt? Applicant answered “no” to all of those questions, and certified that her responses were “true, complete, and correct” to the best of her knowledge and belief. In fact, her answers were incorrect, for Applicant actually had delinquent accounts that clearly came within the scope of the questions asked.

In her Answer to the SOR, Applicant admitted that she had deliberately falsified the material facts in her responses to the e-QIP inquiries, although she modified that admission by claiming she misunderstood the question and was answering it based on her credit report at the time. Nevertheless, even though she claimed to now understand the question, she admitted that she did falsify material facts.

Applicant’s comments provide sufficient evidence to examine if her submission was a deliberate falsification, as alleged in the SOR, or merely an inaccurate answer that was the result of oversight or misunderstanding of the true facts on his part. Proof of incorrect answers, standing alone, does not establish or prove an applicant’s intent or state of mind when the falsification or omission occurred. As an administrative judge, I must consider the record evidence as a whole to determine whether there is a direct or circumstantial evidence concerning Applicant’s intent or state of mind at the time the

alleged falsification or omission occurred. I have considered the entire record, including Applicant's initial and subsequent comments.²⁹

The December 2015 e-QIP asked the same questions that Applicant was asked in her October 2005 and March 2011 e-QIPs. In 2005, Applicant responded appropriately to the questions, citing several different financial issues, and indicating her plans for addressing them. In 2011, although there were continuing financial issues, Applicant lacked candor, and she denied any such issues. Her failure in this regard is unalleged conduct as described above. In 2015, faced again with the same inquiries, Applicant simply listed her 2010 income tax issue, but denied the other financial delinquencies. In light of Applicant's familiarity with the e-QIP, her lengthy history of financial difficulties involving routine delinquent commercial accounts and her federal income tax issues, and her admission that she deliberately falsified her responses, notwithstanding her claimed misunderstanding the question, AG ¶ 16(a) has been established.

The guideline also includes examples of conditions under AG ¶ 17 that could mitigate security concerns arising from personal conduct. They include:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

Neither of the mitigating conditions apply. Applicant's pattern of behavior, including her e-QIP denials, both alleged and not alleged in the SOR; and her denial to the OPM investigator in 2016 that she had any delinquent accounts, until she was confronted with a number of such accounts, also unalleged conduct, reflect a general lack of candor that is not minor or infrequent, and it does not occur under unique circumstances. Furthermore, Applicant has not taken any positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress. Applicant's actions under the

²⁹ The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). See also ISCR Case No. 08-05637 at 3 (App. Bd. Sept. 9, 2010) (noting an applicant's level of education and other experiences are part of entirety-of-the-record evaluation as to whether a failure to disclose past-due debts on a security clearance application was deliberate).

circumstances continue to cast doubt on her current reliability, trustworthiness, and good judgment.

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 SEAD 4, App. A, ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant 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.³⁰

There is very little evidence mitigating Applicant's conduct. Applicant is a 49-year-old employee of a defense contractor, and she has been serving as a provisioning specialist with her current employer since April 2005. A 1987 high school graduate, Applicant attended a community college for three months in 2002, but she did not earn a degree. She enlisted in the U.S. Air Force in June 1987, and served on active duty until February 1996, when she was honorably discharged. She was first granted a secret clearance in 1987, and it was renewed in 2005. Although Applicant failed to timely file her federal income tax returns for a multi-year period, she eventually filed most of them, well after the required filing dates.

The disqualifying evidence under the whole-person concept is simply more substantial. Applicant had seven delinquent accounts, totaling approximately \$2,690, placed for collection, charged off, or reduced to judgments; she failed to timely file federal income tax returns for the tax years 2010 through 2015; and she has unpaid federal income tax, totaling approximately \$43,237. There are also approximately one dozen delinquent debts that were not alleged in the SOR. Applicant made arrangements on two occasions with the IRS to establish installment agreements with respect to her 2010 federal income taxes, but both agreements were cancelled because of her failure to remain in compliance with the arrangements. All of those delinquent accounts, both

³⁰ 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).

alleged and non-alleged, and the unpaid federal income taxes remain unaddressed and delinquent. There is still no evidence that she has filed her federal income tax return for the tax year 2012. Applicant has displayed a lengthy pattern of a lack of candor. She has repeatedly denied having delinquent accounts when in fact there were some. It is now mid-March 2019, and Applicant has shown little voluntary efforts to address her delinquent debts. Applicant's current financial situation is unknown. Considering the lack of evidence regarding her current finances, I am unable to reach a positive conclusion pertaining to Applicant's eligibility for a security clearance.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:³¹

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 an extremely poor track record of debt reduction and elimination efforts, failing to take any substantial corrective actions with respect to her delinquent debts. Paying only \$111 over a multi-year period on an unpaid balance of \$43,237 in federal income taxes, as well as having her wages garnished in the amount of \$3,989, does not qualify as a good-faith effort to resolve debts. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from her financial considerations and personal conduct. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

³¹ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 E:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.n:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge