



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 REDACTED) ISCR Case No. 18-01091
)
 Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

08/02/2019

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has a record of recent financial delinquency following dismissal of a 2008 Chapter 13 bankruptcy case after she fell in arrears on her payments under the plan. Her finances have been stressed by circumstances outside of her control, but she has yet to demonstrate a sufficient track record of debt repayment. She falsified her SF 86 by denying any delinquent debts. Clearance is denied.

Statement of the Case

On May 8, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for her. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to*

Classified Information or Eligibility to Hold a Sensitive Position (AG) effective within the DOD on June 8, 2017.

On February 12, 2019, the DOD CAF informed Applicant that her initial response to the SOR was not complete because she did not answer several of the allegations. On February 21, 2019, Applicant submitted a notarized response to the SOR allegations in which she did not answer SOR ¶¶ 1.c and 1.h. She requested a decision based on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). In response to a February 27, 2019 email from the DOD CAF, Applicant answered SOR ¶¶ 1.c and 1.h on March 1, 2019. On March 11, 2019, Applicant notarized an attachment submitted with her answer, and she again requested a decision without a hearing.

On March 11, 2019, the Government submitted a File of Relevant Material (FORM), consisting of eight exhibits (Items 1-8). DOHA forwarded a copy of the FORM to Applicant and instructed her to respond within 30 days of receipt. Applicant received the FORM on March 25, 2019, and she submitted a timely response that was accepted without any objections by the Government on April 25, 2019. On May 16, 2019, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on May 21, 2019, and accepted Applicant's FORM response in the record as Applicant Exhibit (AE) A.

Evidentiary Ruling

Department Counsel submitted, as Item 8, a summary report of a subject interview of Applicant conducted on June 22, 2016. The summary report was part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personnel background report of investigation may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary report did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview where the applicant was placed on notice of her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of her opportunity to submit objections or material that she wanted the administrative judge to consider. In the FORM, Applicant was advised as follows:

IMPORTANT NOTICE TO APPLICANT: Your Enhanced Subject Interview (ESI) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this FORM, you can comment on whether the PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any

corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness and the document may not be considered as evidence. If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded her if she was represented by legal counsel. She was advised in ¶ E3.1.4 of the Directive that she may request a hearing. In ¶ E3.1.15, she was advised that she is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by her or proven by Department Counsel and that she has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of her opportunity to object to the admissibility of the interview summary report, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. She did not file any objections in her rebuttal (AE A) to the FORM. In the absence of any objections or indication that the interview summary report contains inaccurate information, I accepted Item 8 in evidence, subject to issues of relevance and materiality in light of the entire record.

Findings of Fact

The SOR alleges under Guideline F that Applicant filed a Chapter 13 bankruptcy in or about December 2008 that was dismissed in or about December 2008 (SOR ¶ 1.a), and that, as of May 8, 2018, she owed collection debts totaling \$26,422 (SOR ¶¶ 1.b-1.m). Under Guideline E, Applicant is alleged to have deliberately falsified her April 2016 Electronic Questionnaires for Investigations Processing (e-QIP) by responding negatively to inquiries concerning any financial delinquency on routine accounts in the last seven years (SOR ¶ 2.a). In her SOR response, she admitted each of the alleged debts, except for a \$71 cable service debt (SOR ¶ 1.m). She indicated that the debts in SOR ¶¶ 1.b and 1.g-1.h are student loans under a repayment plan and that an \$81 insurance debt (SOR ¶ 1.l) had been paid. As for the alleged falsification of her security clearance application, Applicant responded, "Hit wrong button. I admit." In an attached statement, she listed several circumstances that compromised her finances. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 57-year-old defense contractor employee seeking a DOD security clearance. Separated from her husband since June 1997, Applicant has been in a cohabitant relationship since September 2014, with the exception of a few months in the spring of 2016. Applicant served on active duty in a branch of the United States military

from March 1996 to December 1999. She has worked for her current employer since August 2012. (Items 3, 8.)

Applicant earned an associate's degree at a technical institute from September 2003 to August 2005. She pursued her bachelor's degree from August 2006 to June 2008, while working full time as a warehouse manager for a packaging company from March 2005 to August 2012. Applicant obtained a combination of federal and private student loans to pay for her education. (Items 4-8.)

Applicant became delinquent on her car and mortgage loan payments when her annual income was \$33,676 in 2006 and \$35,234 in 2007. (Items 4, 8.) In December 2008, Applicant filed a Chapter 13 bankruptcy petition. She owed \$143,892 on her mortgage, and her home was valued at approximately \$135,000. She owed \$27,847 on a loan for a 2007 model-year vehicle. She listed, as unsecured nonpriority claims, \$25,391 in consumer-credit debts and \$61,606 in student loan debts, including \$8,287 in federal student loans. Applicant reported monthly net income of \$680 after expenses. Her bankruptcy case was confirmed in February 2009, with unsecured claims to receive 10% of what she owed. Payments of \$632 per month were made by payroll deduction from February 2009 to July 2009. In June 2009, Applicant moved to amend her bankruptcy to have all of her student loans paid outside her plan, and to increase her monthly payments under the plan to \$720 a month. Her pay was garnished at \$332 every two weeks from mid-July 2009 through June 2010. As of June 22, 2010, she had paid \$12,695 under the bankruptcy plan. Applicant made no payments from July 2010 through September 2010, and a motion to show cause for the \$2,160 arrearage was filed in October 2010. In late December 27, 2010, her Chapter 13 bankruptcy was dismissed for failure to file the necessary documents to convert her bankruptcy to a Chapter 7 bankruptcy. (Item 4.) Appellant provided no explanation for her failure to see the bankruptcy process through to completion.

In August 2012, Applicant was involuntarily terminated from her employment as a warehouse manager over how she handled a sexual harassment issue involving a temporary employee. (Item 8.) Applicant began working for her current employer that month. (Item 3.) In early 2014, three of her private student loans, with balances of \$13,297, \$3,372, and \$3,227, were charged off for nonpayment. As of March 2015, Applicant was past due on 11 other student loans totaling \$40,727. (Item 5.)

In approximately February 2016, Applicant took another position with her employer, which required a relocation to her present locale. (Items 3, 8.) She took the position because of the higher pay. Her moving costs, which are not in evidence, were not covered by her employer. (Item 3.) In March 2016, Applicant obtained a car loan for \$33,694, to be repaid at \$691 a month for 72 months. (Item 6.)

Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) incorporated within an e-QIP on April 14, 2016. Applicant responded negatively to all of the financial record inquiries, including whether, in the past seven years, she had defaulted on any loan; had bills or debts turned over for collection; had any account or credit card suspended, charged off, or cancelled for failing to pay as

agreed; had her wages garnished for any reason; or she had been over 120 days delinquent on any debts. She also answered “No” to whether she was currently over 120 days delinquent on any debt. (Item 3.)

As of November 16, 2016, Applicant had several delinquent accounts on her credit record. The three private student loans charged off in 2014 were in collection for \$13,332 (SOR ¶ 1.g), \$3,235 (SOR ¶ 1.b), and \$3,381 (SOR ¶ 1.h). Seven other debts were also in collection: a \$175 online education debt from January 2011 (SOR ¶ 1.k); an \$81 insurance debt from February 2014 (SOR ¶ 1.l); a \$518 medical debt from November 2015 (SOR ¶ 1.j); two debts from 2015 owed a former landlord of \$2,344 (SOR ¶ 1.c, likely duplicated in SOR ¶ 1.i based on the available credit reports) and \$875 (SOR ¶ 1.d); a \$73 insurance debt placed in October 2016 (not alleged); and a \$71 cable services debt from June 2015 (SOR ¶ 1.m). The 11 student loans that had been more than five payments past due in the spring of 2015 had been transferred to a federal loan servicer in July 2015. As of October 2016, the loan servicer was reporting an \$81,212 balance in deferment. Applicant was making timely payments on five credit-card accounts with balances totaling \$3,091 and on her car loan obtained in March 2016. (Item 6.)

On June 21, 2016, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant admitted that she should have answered “Yes” on her SF 86 to whether her wages had been garnished for any reason in the last seven years. She explained that her wages had been garnished from July 2014 to July 2015 at \$485 a month to catch up on her student loans. As for her failure to disclose any delinquencies on her SF 86, Applicant stated that she had not paid attention to the questions on her SF 86. Applicant claimed to not recall any further details about her debts. However, when confronted about the charged-off student loan accounts, she indicated that the accounts became delinquent because she forgot to apply for continued deferments. She explained that she was making payments of \$16.75 per month toward her consolidated student loans. Applicant denied knowing about any of the outstanding collection debts on her credit record, but indicated that she would examine her credit report and follow up with the creditors. When asked about her Chapter 13 bankruptcy, which was outside the scope of her SF 86, Applicant indicated that it was dismissed in December 2010 after she made two years of payments to satisfy the terms. She described her financial situation as gradually improving and presently in great shape. (Item 8.)

A check of Applicant’s credit in March 2018 revealed new collection debts for cable services from 2017 for \$244 and \$72 (SOR ¶¶ 1.e and 1.f). Her student loans with the federal loan servicer were in forbearance, with a balance of \$81,265, as she continued to take on new debt. In April 2017, Applicant obtained an unsecured loan for \$5,400 to be repaid at \$237 per month. In May 2017, she obtained a secured loan for \$35,298, to be repaid at \$896 per month. Applicant’s credit report also revealed that she had opened several new credit card accounts since her subject interview. As of March 2018, she was making timely payments on \$5,960 in credit card debts. (Item 5.)

On May 8, 2018, the DOD CAF issued an SOR to Applicant because of her dismissed bankruptcy and the collection debts on her record, including the three charged-

off student loans, and because of her failure to disclose any past-due debts on her SF 86. (Item 1.) In June 2018, Applicant refinanced an unsecured loan for \$1,600, to be repaid at \$311 a month. By November 2018, she was past due \$643 on that loan; \$237 on the April 2017 unsecured loan; \$322 on a credit card obtained in January 2016; and \$170 on a credit card obtained in March 2018. The outstanding balance of her deferred federal student loans had increased to \$91,927. Applicant was making timely payments on the \$35,298 secured loan (balance \$29,936) and on 14 credit cards (balances totaling \$8,609), including on a new credit card account opened in August 2018 with a \$729 balance. She had opened more than ten new credit card accounts since June 2016. (Item 7.)

In response to the SOR allegations, Applicant provided documentation from the entity collecting her charged-off student loans in SOR ¶¶ 1.b, 1.g, and 1.h, which showed that she entered into agreements in May 2018 for automatic repayment of the \$3,235 loan (SOR ¶ 1.b) at almost \$81 a month for 24 months; of the \$13,332 loan (SOR ¶ 1.g) at \$100 per month for six months; and of the \$3,381 loan (SOR ¶ 1.h) at \$50 per month for six months. She provided proof of an \$81 payment to satisfy the insurance debt in SOR ¶ 1.i. Applicant explained that she never started taking classes at the university allegedly owed \$175 (SOR ¶ 1.k). She disputed the cable services debt in SOR ¶ 1.m for \$71, stating that she never had service with the creditor. She attributed her debts to having to care for her disabled sister since 1999, who receives only \$7,000 in Social Security income a year; to taking in her girlfriend's daughter and six-month old baby; to taking on car loan payments for her girlfriend's daughter who then wrecked the car; and to incurring \$3,000 in veterinary expenses on credit for her dog in April 2018. She indicated, with no corroborating documentation, that she pays her sister's property taxes and electricity bills, and pays to repair or replace items that break in her sister's home. Applicant explained that the apartment debts were from early termination of her lease due to "unfit living conditions," although she also claimed that she was let out of the lease. About her failure to list any delinquencies on her April 2016 SF 86, Applicant stated:

Did I click the wrong button about if I had debt etc., sure maybe. That was over two years ago. Those forms are so extensive you almost need an attorney with you to fill them out correctly. (Item 2.)

In the FORM, the Government argued that Applicant's explanation for the SF 86 omission of any delinquencies is not plausible, given her disclosure during her subject interview that her wages had been garnished for her student loans. Additionally, if she hit the wrong button, she had an opportunity to add additional comments on her SF 86 and did not do so.

In her rebuttal to the FORM, Applicant indicated about her SF 86 response: "People make mistakes and yes, I guess I hit the wrong button on the form. I was at work at and probably should have taken it home to complete." She asserted she did not know that she "would have to remember every facet of [her] life so that [she] could answer all these questions about it." Applicant provided more information but not the expense figures for assistance provided for her sister, for whom she provides some food and pays her property taxes, or for her girlfriend's daughter. Applicant indicated that she and her girlfriend used

their vacation time and money to bring her girlfriend's daughter and child to live with them. They pay the child's childcare expenses and have incurred an increase in food and utility expenses. As the main financial provider in the household, Applicant has been paying on the car loan for the vehicle purchased for her girlfriend's daughter, who had begun working but then became pregnant, and with two children cannot take over the payments. Applicant submits that she will likely lose her job if her clearance eligibility is denied, which would cause a financial hardship, not only for her, but also for those financially dependent on her income. Applicant indicated that she has just recently been able to save some money, which has alleviated some of the stress of living from paycheck to paycheck. (AE A.)

Applicant had enjoyed her work with her employer before her employer apparently reassigned her to other duties. She indicated that she spent three years improving processes at work and acquired her bachelor's degree and "a green belt in Six Sigma" for her employment. (AE A.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government

reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that 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. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are articulated 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. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

Available credit reports and Applicant’s admissions establish a record of consumer credit delinquencies that raise Guideline F security concerns under AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant filed for a Chapter 13 bankruptcy in December 2008 that was dismissed two years later when she did not follow through on the paperwork required to convert her bankruptcy to a Chapter 7. While she is credited with paying \$12,695 under the plan from February 2009

through June 2010 through payroll deduction, she was \$2,160 in arrears as of October 2010 when the trustee filed a motion to show cause for failure to make her payments. She provided no explanation for her failure to see the bankruptcy process through to completion.

The consumer credit delinquencies in the SOR were incurred after her bankruptcy. Three of the collection debts (SOR ¶¶ 1.b, 1.g, and 1.h) are student loans that were charged off in 2014. Two of the collection debts, SOR ¶¶ 1.c (duplicated in SOR ¶ 1.i) and 1.d resulted from her premature termination of an apartment lease. Three debts are unpaid cable balances (SOR ¶¶ 1.e, 1.f, and 1.m); one debt is owed to an online university (SOR ¶ 1.k); and one debt is medical (SOR ¶ 1.j). An \$81 insurance debt (SOR ¶ 1.l) in collection was paid in mid-May 2018, after the SOR was issued.

Applicant has the burden of establishing mitigation. One or more of the following conditions under AG ¶ 20 may apply:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

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

(c) the person has received or is receiving 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; 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.

AG ¶ 20(a) has little applicability. Applicant's bankruptcy was dismissed almost a decade ago, but it is still relevant because of the negative financial implications raised by her failure to complete the process. Some of her post-bankruptcy delinquencies were incurred before 2015. The university debt is from 2011 (SOR ¶ 1.k), the student loans in SOR ¶¶ 1.b, 1.g, and 1.h were charged off in spring 2014, and the insurance debt (SOR ¶ 1.l) was placed for collection in early 2014. The apartment (SOR ¶¶ 1.c and 1.d) and medical debts (SOR ¶ 1.j) were assigned for collection in August and November 2015. The

cable services debts in SOR ¶¶ 1.e, 1.f, and 1.m were placed for collection within the last four years. While it is unclear when some of the accounts first became delinquent, the debts were not paid as of the date of the SOR. 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)).

Applicant attributes her financial problems to several circumstances that could fall within AG ¶ 20(b). She indicated that she has helped her disabled sister since 1999, by providing some food, paying her property taxes and electric bills, and paying for repairing or replacing items for her sister when they break. Applicant and her cohabitant girlfriend took in the latter’s daughter and baby, who needed a place to live. They incurred additional costs for the baby’s care, and then the daughter had or is about to have a second child. Applicant took on a loan for a vehicle for her girlfriend’s daughter, who needed transportation once she found a job. The decisions to care for her sister and girlfriend’s daughter were within her control, but Applicant had no control over the girlfriend’s daughter becoming pregnant with her second child.

Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside of her control, I have to consider whether Applicant acted in a reasonable manner when dealing with her financial difficulties. See 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 Applicant maintained contact with her creditors and attempted to negotiate partial payments to keep debts current. In that regard, she asserted during her June 2016 subject interview that her wages were garnished for one year to bring her student loans (SOR ¶¶ 1.b, 1.g, and 1.h) current in July 2015. She indicated that she was making \$16.75 monthly payments toward a consolidated student loan. She presented no documentation of efforts to address the student loans before May 22, 2018, and the balances of the student loans at that time had not changed from October 2016. Applicant was placed on notice of the other collection debts on her credit record during her June 2016 interview. She had opened more than 10 new credit card accounts since completing her SF 86 in April 2016, as most if not all of the collection debts in the SOR went unaddressed. The latest secured loan on Applicant’s credit record was opened in May 2017 for \$35,298. Applicant has not credibly explained why she needed to take on such a sizeable loan with a repayment term of \$896 a month. She provided no details about her income or expenses, so it is difficult to conclude that she has made sound financial decisions.

AG ¶¶ 20(c) and 20(d) have only minimal applicability. Applicant is credited with satisfying the \$81 insurance debt in May 2018 (SOR ¶ 1.l), and a favorable finding is returned as to that debt. Although her repayment arrangements for the student loans in SOR ¶¶ 1.b, 1.g, and 1.h. are viewed favorably, it would be premature to apply either AG ¶ 20(c) or AG ¶ 20(d) to the student loans without any proof of compliance with the repayment terms and lacking any current repayment plans. Assuming the payments were

made as promised, she would have reduced the balances only by \$1,941 on the \$3,235 loan, by \$600 on the \$13,332 loan, and by \$300 on the \$3,381 loan. Without evidence of current repayment plans for those debts, it cannot reasonably be concluded that her financial problems are under control. Moreover, she has made no payments, and has no payment arrangements in place for other debts in the SOR.

Regarding AG ¶ 20(e), Applicant disputed the \$71 cable services collection debt (SOR ¶ 1.m) on the basis that she never had service with the company. While a credit report can normally meet the burden of establishing a debt, it is noted that the debt does not appear on the March 2018 and November 2018 credit reports. Applicant's 2018 credit reports include the \$2,094 debt in SOR ¶ 1.c but not the \$2,344 debt in SOR ¶ 1.i, which appears to be the balance of the debt in SOR ¶ 1.c reported by a collection entity. Applicant presented no documentation to show that the debts in SOR ¶¶ 1.i and 1.m are not valid, but enough doubt exists as to whether she owes those balances. For that reason, I find for Applicant as to SOR ¶¶ 1.i and 1.m.

The Appeal Board has held that an applicant is not required to establish that she has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). Applicant has demonstrated that she can handle some financial accounts responsibly, as evidenced by her timely payments on several credit card accounts. However, available information does not enable a predictive judgment that Applicant's financial situation is sufficiently under control that she can be counted on to address her delinquent accounts. Circumstances keep coming up that have apparently prevented her from addressing her delinquencies. Within the past few years, she has opened a dozen credit card accounts and taken on new debt while showing little progress on resolving the SOR debts. Loans obtained in April 2017 and June 2018 were past due as of November 2018. She owes approximately \$91,927 in deferred federal student loan debt on which she will have to make payments at some point. The Appeal Board recently reiterated in ADP Case No. 17-0063 (App. Bd. Dec. 19, 2018) that "an applicant must demonstrate a plan for debt repayment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts." Too many unanswered questions exist about her present financial situation to conclude that her financial problems no longer present a security risk. The financial considerations security concerns are not sufficiently mitigated.

Guideline E: Personal Conduct

The security concern about personal conduct is articulated 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 investigations or adjudicative processes. The following will normally result in 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.

Applicant certified to the accuracy of an April 2016 SF 86 on which she responded negatively to all of the financial record inquiries, including whether, in the past seven years, she had defaulted on any loan; had bills or debts turned over for collection; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; had her wages garnished for any reason; or she had been over 120 days delinquent on any debts. Applicant responded “I admit” to the alleged deliberate falsification, but she then stated in explanation that she “maybe hit the wrong button;” and that [t]hose forms are so extensive you almost need an attorney with you to fill them out correctly.” In rebuttal to the FORM, Applicant stated, “People make mistakes and yes, I guess I hit the wrong button on the form.” She explained that she completed the form at work when she should have taken it home, but did not elaborate further as to why this would have made a difference. She also claimed that she did not know that she would have to recall “every little facet” of her life.

The Appeal Board has repeatedly held that, to establish a falsification, it is not enough merely to demonstrate that an applicant’s answers were not true. To raise security concerns under Guideline E, the answers must be deliberately false. In analyzing an applicant’s intent, the administrative judge must consider an applicant’s answers in light of the record as a whole. See, e.g. ISCR Case No. 14-05005 (App. Bd. Sep. 15, 2017); ISCR Case No. 10-04821 (App. Bd. May 21, 2012). When interviewed by an OPM investigator in June 2016, Applicant gave yet another explanation for her failure to list any delinquencies on her SF 86. She indicated that she had not paid attention to all the questions. She then admitted that her wages had been garnished at \$485 per month from July 2014 to July 2015 to catch up on her student loans (SOR ¶¶ 1.b, 1.g, and 1.h). She claimed to recall no other details about those student loans, but when confronted, she indicated that the accounts became delinquent because she had forgotten to apply for continued deferments and could not make the monthly payments required to keep them current. She asserted that the loans were currently in good standing, and that she was paying \$16.75 per month toward a consolidated balance. Applicant denied knowing about the collection debts on her credit record when confronted with the adverse information on her credit report. Even assuming that Applicant lacked knowledge about the collection accounts or that her student loans were in collection status, she knew she had defaulted on three student loans within seven years preceding her SF 86. Moreover, although she was not specifically

alleged in the SOR to have falsified the SF 86 question concerning any wage garnishments in the last seven years, Applicant should have answered “Yes” to that question as well. The evidence supports a reasonable finding that Applicant deliberately falsified her SF 86. Disqualifying condition AG ¶ 16(a) applies. It provides:

(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.

None of the mitigating conditions under AG ¶ 17 fully apply. AG ¶ 17(a), “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts,” warrants some consideration because Applicant admitted during her interview in June 2016 that her wages had been garnished for her student loans. However, she needed prompting before she provided details of the garnishments and the reason for her default of her student loans. There is no evidence that her negative response to the SF 86 financial record inquiries was on the advice of legal counsel or person authorized to provide guidance concerning the security clearance process, so AG ¶ 17(b) does not apply. That mitigating condition states:

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

AG ¶ 17(c) is not pertinent. By falsely certifying that she had no loan defaults in the last seven years, no garnishments in the last seven years, and no delinquencies over 120 days in the last seven years, Applicant violated 18 U.S.C. § 1001 of the United States Code. Falsification of an SF 86 is too serious for mitigation under AG ¶ 17(c), and it raises considerable doubts about whether her representations can be relied on. AG ¶ 17(c) states:

(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.

Perhaps more significant from a trustworthiness standpoint going forward, Applicant’s ongoing failure to acknowledge the intentional nature of her SF 86 falsifications reflects a lack of reform. AG ¶ 17(d) requires a meaningful acknowledgement of behavior without excuses or justifications. It is not enough in reform for Applicant to indicate that she may have hit the wrong button, or that she should have taken the form home to complete. As noted by the Government, Applicant could have provided information about her

delinquencies in the section for additional comments. In her rebuttal to the SOR, Applicant stated that she did not know that she would have to remember “every little facet” of her life. She does not demonstrate that she understands the importance of full candor, which is required of the security clearance applicant. The personal conduct concerns are not mitigated under AG ¶ 17(d), which requires:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

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 her conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d):

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

Some of the adjudicative process factors were addressed under Guidelines F and E, but some warrant additional comment. Applicant is credited with pursuing her college degree to obtain a better job and then a green belt in Six Sigma to contribute more effectively to her employer. There is no evidence that she is disloyal to the United States or to her employer, but the security clearance determination is not a comment on an individual’s loyalty or patriotism. Nor is it made as punishment for specific past conduct. The security clearance assessment is a reasonable and careful evaluation of an applicant’s circumstances and whether they cast doubt upon her judgment, self-control, and other characteristics essential to protecting national security information. Applicant asks that consideration be paid to the negative impacts denial of security clearance eligibility would have on her and on those persons who depend on her income. The Appeal Board recently reaffirmed in ISCR Case No. 17-03971 (App. Bd. Mar. 15, 2019) that the consequences that arise from an unfavorable clearance decision are not relevant considerations in evaluating an applicant’s eligibility for a security clearance. For the reasons noted above, Applicant has raised enough doubts about her judgment, reliability, and trustworthiness to where I am unable to conclude that it is clearly consistent with the national interest to grant her security clearance eligibility at this time.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.k:	Against Applicant
Subparagraphs 1.l-1.m:	For Applicant
Paragraph 2, Guideline E:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge