

KEYWORD: Financial; Personal Conduct

DIGEST: Forty-four-year-old Applicant had 29 debts totaling \$22,659 alleged in the statement of reasons (SOR). Her debt problems resulted primarily from a leave without pay to care for her mother, and unemployment resulting from her brain surgery. She received financial counseling and consolidated most of her debts. However, in 2006 she paid only \$148 towards her SOR debts. There is insufficient evidence of financial progress towards elimination of her debts. Her erroneous statements on two SF 85Ps were not made with an intent to deceive. She has not mitigated concerns about financial considerations. However, she has mitigated security concerns pertaining to her personal conduct. Eligibility for an ADP I/II/III position is denied.

CASENO: 06-17302.h1

DATE: 01/22/2007

DATE: January 22, 2007

In re:)	
)	
-----)	
SSN: -----)	ADP Case No. 06-17302
)	
Applicant for ADP I/II/III Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MARK W. HARVEY**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Forty-four-year-old Applicant had 29 debts totaling \$22,659 alleged in the statement of reasons (SOR). Her debt problems resulted primarily from a leave without pay to care for her mother,

and unemployment resulting from her brain surgery. She received financial counseling and consolidated most of her debts. However, in 2006 she paid only \$148 towards her SOR debts. There is insufficient evidence of financial progress towards elimination of her debts. Her erroneous statements on two SF 85Ps were not made with an intent to deceive. She has not mitigated concerns about financial considerations. However, she has mitigated security concerns pertaining to her personal conduct. Eligibility for an ADP I/II/III position is denied.

PROCEDURAL RULING

The Statement of Reasons (SOR) refers to Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. A memorandum from the Deputy Under Secretary of Defense (Counterintelligence and Security) to Director, Defense Office of Hearings and Appeals (DOHA), dated November 19, 2004 states DOHA shall utilize provisions of the Directive to resolve contractor cases involving trustworthiness determinations. In this case, the pertinent disqualifying and mitigating conditions in the Regulation and the Directive are the substantially the same. Paragraph C8.2.1 of the Regulation provides that the procedural rules of the Directive apply for contractor personnel.

STATEMENT OF THE CASE

On September 17, 2002 and November 8, 2004, Applicant submitted Questionnaires for Public Trust Positions (Standard Form (SF) 85P).¹ On August 15, 2006, DOHA issued a SOR to her, pursuant to the Directive and Regulation.² The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conditions). The SOR detailed reasons why DOHA recommends that Applicant's case be submitted to an administrative judge for a determination that Applicant is not eligible for occupying an ADP I/II/III position.

In a notarized, sworn answer, received at DOHA on October 16, 2006, Applicant responded to the SOR allegations, and elected to have her case decided at a hearing.³ On October 31, 2006, the case was assigned to me. The hearing was held on November 30, 2006. At the hearing I approved Applicant's request that I hold the record open so she could submit additional documentary evidence (R. 62). DOHA received the transcript of the hearing (R.) on December 13, 2006, and I received it on December 14, 2006. Department Counsel had no objection to my consideration of the evidence Applicant provided, and I admitted her additional evidence (Ex. K) on January 3, 2007.

FINDINGS OF FACT

¹Exhibit (Ex.) 1 (Questionnaire for Public Trust Positions, Standard Form (SF) 85P) is dated November 8, 2004, on the last page ("8/18/04" is crossed out the initials "BPB" appear nearby (R. 45)); Ex. 2 (SF 85P) is dated September 17, 2002, on the last page.

²Ex. 6 (Statement of Reasons (SOR), dated August 30, 2006). The SOR is the source for all factual assertions in the remainder of this paragraph.

³Ex. 7 (Applicant's response to SOR, notarized and sworn on October 12, 2006).

As to the factual allegations under Guideline F, Applicant admitted that she was responsible for the 29 debts listed on the SOR, but also indicated one SOR debt was a duplication.⁴ Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings of fact.

Applicant is 44 years old.⁵ For the last 13 years, she has been employed by a United States government contractor, and she is involved with processing sensitive medical records.⁶ She has access to social security numbers and other private information (R. 6-7). She has no prior military service.⁷ She has a high school diploma.⁸

In 2000 and 2001, her grandmother became ill, and Applicant took leave from her job to care for her (R. 27, 35). Her grandmother died in May of 2001 (R. 29). The last couple months of her grandmother's life, Applicant only worked a day or two per week (R. 29).

Applicant had back surgery in the late 1980s and again in the early 1990s (R. 33, 35). She had brain surgery in 2004 (R. 33). She was unable to work from November 2004 to January 2005 (R. 34). At first she used up her sick leave (R. 34). Then she received disability pay of 60 percent of her salary for four weeks (R. 34). However, there was a 2-3 week gap where she did not receive any income (R. 34).

Applicant was married in 1980, and has two children (born in 1980 and 1986).⁹ She assists her children with college tuition (R. 27, 44). For example, she provided her daughter \$600 the last half of 2006. Her husband is employed, but she does not know his income (R. 23). For the 26 years of their marriage, he has kept his money in a separate account (R. 23, 24). She pays the family bills, and he provides \$400 to \$500 per month to her (R. 23, 24). Her husband's support is inconsistent. Over the years of their marriage, her husband was moved in and out of her residence (R. 27).

Applicant made payments on some of her delinquent accounts from 2000 to 2006 (R. 28). However, few of her creditors were willing to accept small payments (R. 28). She waited until November 2006 to seek credit counseling because she did not believe she had such bad credit until she reviewed the credit reports (R. 41). Her employer provided financial counseling services to her for free (R. 41). On November 2, 2006, and her credit counselor told her to contact her creditors (R. 40, 53-56). Her credit counselor made suggestions about how she could reduce her expenses (R. 54). They also made plans about tracking expenses and setting up a budget (R. 54, 68). She has begun cutting back her expenses, and her daughter has cut her expenses too (R. 68).

⁴The source for all factual assertions in this paragraph is Ex. 7, *supra* n. 3.

⁵Ex. 1, *supra* n. 1, at 1 (date of birth); R. 6.

⁶*Id.*, question 11 at 3 (employment).

⁷*Id.*, question 16, at 6 (military service).

⁸*Id.*, question 10, at 2 (education); R. 6.

⁹*Id.*, questions 14 and 15, at 5 (marital status and relatives); R. 22.

Applicant currently drives a 2003 Chevy Malibu (R. 43). She made payments on it, and now the lien is completely paid (R. 43). The lien on her husband's 1989 Ford Ranger is also paid in full (R. 43).

In her response to the SOR, dated October 12, 2006, she stated, "I am now in the process of contacting each company on the [SOR] to make arrangements to satisfy all debt. . . . I now understand and agree I have neglected to satisfy the debt[,] but I will begin to correct the situation. I am responsible for all this debt. It is my hope that at the hearing I will be able to provide documentation showing I have satisfied some of the debt and that I am working on satisfying all of the debt."

The following table provides the amount of each SOR debt and the its current status:

SOR ¶	Amount in \$	Date Last Action on Account	Type Account	Status
1.a	155	March 1999	Jewelry	Partial payment made ¹⁰
1.b	1,412	January 2000	Loan	Duplication of SOR ¶ 1.f (R. 32-33)
1.c	1,255	March 2000	Credit	Amount of debt disputed (R. 28-29)
1.d	11,805	May 2000	Car repossession	Delinquent debt ¹¹
1.e	134	April 2001	Cable	Delinquent debt ¹²
1.f	4,422	May 2001	Loan	Delinquent debt ¹³
1.g	85	August 2001	Medical	Payment plan ¹⁴

¹⁰She did not make payments from 1999 to late 2006 because she believed this debt was paid (R. 25). Applicant provided a letter dated November 6, 2006, from the SOR ¶ 1.a creditor requesting a partial payment of \$78 (Ex. D). A Money Gram payment document for \$78 is Ex. E. She said the remainder would be paid in 30 days (R. 25).

¹¹Her 1997 Chevy Blazer was repossessed (R. 29-30; Ex. 5). She was unaware of details such as how much she paid for it, and what it was sold for after it was repossessed (R. 30). The creditor was willing to accept three large payments to take care of the delinquency, but they were unwilling to accept smaller, regular payments (R. 42).

¹²Applicant said she dispute the debt, asserting that she terminated her contract for television services early (R.31). She conceded a termination fee was in her contract (R. 31). Applicant requested updated information on her account, and the creditor informed her that the debt was \$313 (Ex. K at 7).

¹³In a letter dated November 29, 2006, the creditor agreed to settle the debt of \$4,691 for \$3,565 with payments of \$40 per month, starting January 15, 2007 (Ex. C; R. 32). Applicant's signature does not appear on the settlement agreement (Ex. C).

¹⁴During her OPM interview on November 11, 2005, Applicant said she would attempt to resolve her medical debts. In a letter dated November 23, 2006, the medical creditor offered to settle all of their medical bills for \$2,051, payable \$50 per month (R. 35-36; Ex. K at 11). Applicant signed the settlement agreement (Ex. F). A receipt shows

1.h	78	August 2001	Medical	Payment plan ¹⁴
1.i	174	May 2002	Telephone	Delinquent debt
1.j to 1.t	1,601	November 2002	Medical	Payment plan ¹⁴
1.u	294	December 2003	Cell phone	Disputed debt ¹⁵
1.v	762	July 2004	Satellite television	Delinquent debt ¹⁶
1.w	60	November 2004	Medical	Payment plan ¹⁴
1.x	59	July 2005	Medical	Payment plan ¹⁴
1.y	110	October 2005	Medical	Payment plan ¹⁴
1.z	18	November 2005	Medical	Payment plan ¹⁴
1.aa	146	November 2005	Medical	Payment plan ¹⁴
1.bb	20	February 2006	Medical	Payment plan ¹⁴
1.cc	69	January 2003	Fine for bad check	Paid—resulted from error in balancing checkbook (R. 44)

Applicant's personal financial statement (PFS) prepared in early November 2006 indicated her monthly net pay after deducting ten percent for retirement is \$3,127.¹⁷ She listed monthly household expenses as follows: rent (\$351), groceries (\$200), clothing (\$75), utilities (\$300), car expenses (\$100), taxes (\$150), children's expenses (\$500), insurance (\$655), debt payments (\$150), and miscellaneous (\$285). She did not list any other debt payments or other liabilities. After

a \$50 payment on December 14, 2006 (Ex. K at 11). Her next payment is due January 11, 2007 (Ex. K at 11).

¹⁵She received a bill for \$400, and paid \$294, which she thought was the correct amount (R. 38-39; 47-50). She did not provide a receipt showing this \$294 payment. This large cell phone bill resulted from calls her family made from outside their calling area (R. 49). After she made the \$294 payment, she did not receive any correspondence from creditor (R. 38-39). She recently learned over the telephone that the debt was \$294, but further information would be provided (R. 48). Applicant requested information about account from creditor on December 13, 2006, using email (Ex. K at 6). The financial services section responded that they did not show a balance owed, and instructed her to dispute the debt with the credit reporting agency (Ex. K at 6).

¹⁶She acknowledged the accuracy of the \$767 balance she owed to an investigator from the Office of Personnel Management (OPM) (Ex. 5). At her hearing, she said she had made payments on this debt during the last three years (R. 58). I advised Applicant that it was important to the decision in her case that she make her first payment on her satellite television debt (R. 59-61). I left the record open to permit her additional time to provide evidence of her payment (R. 61-62). On December 10, 2006, Applicant said that she learned the debt was \$313 (Ex. K at 5, 7; R. 39-40), and asked for a settlement agreement. *Id.* Her memorandum of January 1, 2007, states the settlement agreement she received reflected a different debt amount (Ex. K at 5). She did not provide any evidence showing a payment or partial payment on her satellite television debt.

¹⁷Ex. B (Applicant's spending plan prepared with the assistance of her financial counselor in November 2006). This paragraph is derived from Applicant's 2006 PFS and R. 39-41, unless stated otherwise.

deducting all expenses, she had a positive cash flow of \$111 per month. This monthly net pay did not include her husband's salary (R. 66). He provides about \$400 to \$500 per month to their household (R. 67). After paying all expenses she believed she has more than \$111 left over each month, and perhaps as much as \$300 or \$400 per month (R. 67). She did not explain why \$655 is allocated for insurance payments. Her November 28, 2005, PFS was somewhat different from the PFS she provided to her financial counselor in 2006.¹⁸

Two character witnesses who have known Applicant for many years described her as intelligent, honest, trustworthy, inquisitive, diligent, respectful and having excellent leader qualities, especially integrity (Ex. K at 3, 12). Applicant provided three of her performance reviews, which showed solid work performance on behalf of the government contractor (Ex. H, I and J).

Personal Conduct

Question 22b of her 2002 and 2004 SF 85Ps asks, "**YOUR FINANCIAL RECORD** Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government."¹⁹ Applicant answered, "No." SOR ¶ 2.a alleges that this answer is false. Her 2005 statement to an OPM investigator did not mention the falsification issue (Ex. 5).²⁰ The following colloquy between Department Counsel and Applicant provides her explanation for answering, "No" to Question 22b:

Q. Okay. You were aware that you had accounts that had been placed for collection, weren't you?

A. I did not understand that question that way. I answered it the way I thought it, you know, should have been answered, but I didn't willfully not, you know, mis-answer (sic) it. I honestly didn't understand. And I didn't understand, like, for example, when the car was repossessed, that I actually still – actually still [was] under the contract. I didn't understand that. I thought once they did that, that I was still considered delinquent until (sic). But I understand now that I'm considered delinquent until it shows a zero balance. But I did not understand that, then.

¹⁸Her November 28, 2005, PFS was part of her OPM interview. It substantially differed from her 2006 PFS in the areas of monthly gross pay (\$2,997), net pay (\$1,845), car payment (\$260), gasoline (\$240), and gifts/college expenses (\$150). The OPM PFS did not include an explanation of the differential between her gross pay and her net pay. The net monthly remainder after deducting monthly expenses and other deductions was \$13 per month.

¹⁹The Security Clearance Application Standard Form (SF) 86 (September 1995 version) was not used in this case because the issue is Trustworthiness or Public Trust, rather than a security clearance. It is noteworthy that the SF 86 has two Questions concerning debts: Question 38. "**Your Financial Delinquencies - 180 days** In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and Question 39. "**Your Financial Delinquencies - 90 days** Are you currently over 90 days delinquent on any debt(s)?" By asking the question two different ways, and seeking two different types of information, there is less of an opportunity for mistakes. SF 86 Question 39 apparently seeks information that is not included in Question 38. In any event, the use of the 7-year qualifier in Question 38 versus the "current" qualifier in Question 39 is relevant because Applicant apparently applied a "current" qualifier to her answer to Question 22b.

²⁰Ex. 5 (summary of Applicant's oral statement to special investigator for the OPM Investigations Service on November 28, 2005).

Q. What did you think the notices from them after they sold it meant?

A. That I owed them. But I didn't know I was still considered delinquent.

Q. Were you –

A. I mean, I just misunderstood. I just mis – I mean, I don't have a fancy explanation. I just misunderstood.

R. 46-47. She reiterated that she “totally misunderstood that question” (R. 63-64). She mentally limited the adjective, “delinquent” in Question 22b to those debts and bills that she was “actually currently paying” (R. 64). For example, at the time she answered Question 22b she was making car payments of \$260 per month, and this debt was current and not delinquent (R. 64). When her SF 85P was prepared, no one was around to answer her questions. However, she did receive guidance from other contractor employees (R. 64).

I carefully observed Applicant's demeanor as she addressed the falsification of her SF 85Ps. I am convinced she answered, “No” because she truly misunderstood what information the government was seeking. She mentally limited the inquiry to delinquent debts that she intended to pay. At her hearing she responded in a forthright, candid manner to the best of her ability. After considering all the record evidence, I find that she was truthful about her intent, and her answer on Question 22b was an honest mistake, rather than a deliberate lie.

POLICIES

In the evaluation of an Applicant's security suitability for a public trust position, an administrative judge must consider Appendix 8 of the Regulation, which sets forth brief introductory explanations for each guideline, and the adjudicative guidelines, which are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC).

These adjudicative guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process provision at Appendix 8 of the Regulation. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision.

To be eligible for a public trust position, an applicant must meet the security guidelines contained in the Regulation. “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” Regulation ¶ C6.1.1.1.

“The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk.” Regulation, Appendix 8. Because the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept,” an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

Specifically, an administrative judge should consider the nine adjudicative process factors listed in the Regulation, Appendix 8, at 132: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to this adjudicative guideline are set forth and discussed in the Conclusions section below.

Since the protection of sensitive information is the paramount consideration, the final decision in each case is arrived at by applying the standard that eligibility for a public trust position is "clearly consistent with the interests of 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by "substantial evidence."²¹ The government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with Regulation, Appendix 8, that it is not clearly consistent with national security to approve eligibility for a public trust position. Directive ¶ E3.1.14. If the government meets its initial burden, the Applicant then has the burden of persuasion, that is to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. These same burdens of proof apply to trustworthiness determinations for ADP positions.

A person who seeks eligibility for a public trust position enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants eligibility for a public trust position. Decisions include, by necessity, consideration of the possible risk an Applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. The scope of an administrative judge's decision is limited. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings.

²¹"Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "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)g

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Financial Considerations

The government has met its initial burden under Guideline F. Applicant's failure to pay her debts is of concern, especially in light of her desire to have access to sensitive government information. Appendix 8 of the Regulation clearly expresses the government's concern regarding financial considerations, stating, "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect sensitive information.

Applicant's failure to satisfy her outstanding financial obligations give rise to Financial Considerations Disqualifying Condition (FC DC) 1, "a history of not meeting financial obligations," and FC DC 3, "inability or unwillingness to satisfy debts." The debts in SOR ¶¶ 1.a to 1.u became delinquent between 1999 and December 2003. The debts in SOR ¶¶ 1.v to 1.bb became delinquent between July 2004 and February 2006. Twenty-one of her SOR debts have been delinquent for more than three years. Applicant established that the debt in SOR ¶ 1.cc was paid. She began two payment plans for twenty SOR debts, and made her first payment on each account. One debt was a duplication. The amounts of two SOR debts were disputed. Five SOR debts are currently delinquent, including one SOR debt that was not barred by the 3-year South Carolina statute of limitations for debts.

FC DCs 1 and 3 apply to her failure to meet her financial obligations, and her admission that she was unable to pay the debts, which then became delinquent and remained delinquent. The government produced substantial evidence of these two disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the government.²²

I considered Financial Considerations Mitigating Condition (FC MC) 1, "the behavior was not recent;" FC MC 2, "it was an isolated incident;" FC MC 3, "conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation;" FC MC 4, "the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;" and FC MC 6, "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

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

The Regulation does not define “recent,” and there is no “bright-line” definition of what constitutes “recent” conduct. Based on my evaluation of the record evidence as a whole,²³ I conclude FC MCs 1 and 2 do not apply because Applicant had multiple delinquent SOR debts.

FC MC 3 partially applies to all of her SOR debts because the debts became delinquent as the result of her periodic unemployment, including her absence of work to support of mother who was ill. Her brain surgery incapacitated her from working from November 2004 to January 2005, and caused a significant loss of income and multiple medical debts. These changes in family circumstances are good examples of the unforeseen problems that trigger application of FC MC 3, causing financial problems that may be “largely beyond the person’s control.” Applicant, however, does not receive full credit for FC MC 3 because she has made insufficient financial progress since returning to work in January 2005. There is a paucity of evidence showing how she endeavored to pay or resolve her SOR debts over the last two years, especially after her OPM interview on November 28, 2005, made her aware of the security significance of her financial problems.

She received financial counseling, and receives partial credit under FC MC 4 because there are some indications that the problem is being resolved and she is gaining control of her financial situation. In regard to application of the statute of limitations, FC MC 6 does not apply because there is insufficient information to establish that Applicant showed good faith in the resolution of her debts.²⁴ After receiving the SOR on August 15, 2006, she made an \$78 payment resolving half of the debt in SOR ¶ 1.a, and she made a \$50 payment on the consolidated debt for SOR ¶¶ 1.g-1.h;

²³See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

²⁴The 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 Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(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)). In ISCR Case No. 99-9020 at 6 (App. Bd. Dec. 1, 1999), the Appeal Board specifically addressed application of the statute of limitations, stating a “person who decides not to honor his or her debts may be able to avoid paying those debts until they are legally uncollectible because the statute of limitations has run. Reliance on the running of a statute of limitations would be a legally permissible course of action. However, it would not demonstrate a good-faith effort to resolve one’s debts that would fall under the meaning of Financial Considerations Mitigating Condition 6.” See ISCR Case No. 03-10880 (App. Bd. June 24, 2005); ISCR Case No. 01-09691 (App. Bd. Mar. 27, 2003) (stating an applicant must do more than merely cite the statute of limitations to obtain the full benefit of FC MC 6). See also ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003) (“[E]ven if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant’s conduct in incurring and failing to satisfy the debt in a timely manner.”); ISCR Case No. 98-0349 at 2-3 (App. Bd. Feb. 3, 1999) (even though an applicant’s delinquent debts were not legally collectible because of the statute of limitations, that fact did not preclude the Administrative Judge from considering the applicant’s failure to resolve the delinquent debts before the statute of limitations ran). Cf. ISCR Case No. 01-04425 at 3-4 (App. Bd. May 17, 2002) (adverse Guideline F conclusions possible where applicant chose not to pay her delinquent debts, waited until her creditors ceased trying to collect those delinquent debts, and they were eventually dropped from her credit report.)0

1.j-1.t; and 1.w-1.bb. These two payments are insufficient in magnitude to warrant application of FC MC 6. Most importantly, her past conduct in generating and failing to resolve her delinquent debts over the last seven years is most relevant to security concerns relating to financial considerations, and weighs against mitigating financial considerations.

Personal Conduct

Under Guideline E, “conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that [applicant] may not properly safeguard classified information.”

Two personal conduct disqualifying conditions (PC DC) could potentially raise a security concern and may be disqualifying in this case. PC DC 2 applies where there has been “deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.” A security concern may result under PC DC 3 when an applicant deliberately provides “false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.”

For PC DCs 2 and 3, Applicant gave a false answer to Questions 22b of her 2002 and 2004 SF 85Ps. The evidence of record, however, does not establish falsification of Question 22b by substantial evidence. Although she admitted preparing her trustworthiness questionnaire, and answering incorrectly, she did not fully understand the question.²⁵ At the time she completed the SF 85P, she thought that the answer she provided was correct. Her statements show confusion about which debts were supposed to be disclosed.

A security concern based on Guideline E may be mitigated by substantial evidence of personal conduct mitigating conditions (PC MC). Under PC MC 1, security concerns may be mitigated when the derogatory “information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability.” The allegations in SOR ¶¶ 2.a and 2.b are not established by substantial evidence. The erroneous answer was a mistake, and was not made with intent to deceive.

²⁵In ISCR Case No. 03-10380, 2006 Lexis 37, at *22 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 App. Bd. June 9, 2004), the Board stated:

(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. In that decision, the Board went on to state that given the record evidence in that case, 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.

In sum, I am satisfied that Applicant's erroneous answer to Question 22b was a mistake caused by her misunderstanding of the question. She honestly believed that the correct answer was, "No" at the times she provided it.

"Whole Person" Analysis

In addition to the enumerated disqualifying and mitigating conditions, I have considered the general adjudicative guidelines related to the whole person concept under the Regulation, Appendix 8, at 132. As noted above, Applicant's lengthy history of failing to meet her financial obligations, and inability or unwillingness to satisfy her debts raise serious trustworthiness concerns. She is currently 44 years old. She was sufficiently mature to be fully responsible for her conduct. Her actions in generating or failing to resolve her debts in a timely fashion were knowledgeable and voluntary. Her debt problems resulted from voluntary decisions to purchase items. However, her inability to repay her debts resulted from her unemployment, her care for her mother, and her medical problems. There is some evidence of rehabilitation, positive behavior changes, and improved circumstances as indicated by self-discipline and the almost complete absence of new delinquent, unpaid, non-medical debt over the last three years. Moreover, changes in her financial habits resulting from her financial counseling shows signs of financial improvement in the future. The potential for pressure, coercion, exploitation, or duress should decrease in the future, providing she applies the financial counseling she is receiving. Moreover, Applicant was able to pay some non-SOR debts, as demonstrated by payment of her car loan.

The debts in SOR ¶¶ 1.a to 1.u are not collectible because of the 3-year South Carolina statute of limitations. *See* S.C. Code. Ann. § 15-3-530 (listing the statute of limitations for various debts); *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (explaining the societal value of application of the statute of limitations to delinquent debts). The debts in SOR ¶¶ 1.a, 1.g, 1.h, 1.j-1.t, and 1.w to 1.bb are included as part of two new consolidated payment plans. The debt in SOR ¶ 1.cc is paid. Greater awareness of financial responsibilities through financial counseling, and her recent steps to determine the scope of her debts and to consolidate many of them, should result in a trend of improved financial circumstances.

Nevertheless, her total payments since August 15, 2006 on her delinquent SOR debts totaled \$128. There have not been any payments on the debt in SOR ¶ 1.v (\$313) even though it is not barred by the 3-year South Carolina statute of limitations for debts. There is an insufficient history that she is financially responsible, and able to live within her means. After weighing the disqualifying and mitigating conditions, all facts and circumstances, the mitigating and aggravating evidence weighing for and against her, in the context of the whole person, I conclude she has not mitigated the trustworthiness concerns pertaining to financial considerations.

Applicant's trustworthiness eligibility and suitability is not supported by substantial evidence. I take this position based on the law, my "careful consideration of the whole person factors"²⁶ and supporting evidence, as well as my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities. For the reasons stated, I conclude Applicant is not eligible for a public trust position.

²⁶*See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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 to 1.u:	For Applicant
Subparagraph 1.v:	Against Applicant
Subparagraphs 1.w to 1.cc:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a to 2.b:	For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a public trust position. Eligibility for an ADP I/II/III position is denied.

Mark W. Harvey
Administrative Judge