



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



In the matter of: )  
)  
) ISCR Case No. 14-00253  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline E. Heintzelman, Esquire, Department Counsel  
For Applicant: Brett I. Johnson, Esquire

11/26/2014

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on July 2, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on April 25, 2014, detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The action was taken under Executive Order 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 *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on July 14, 2014, and she answered it on August 18, 2014. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on September 4, 2014, and I received the case assignment on September 11, 2014. DOHA issued a Notice of Hearing on September 12, 2014, and I convened the hearing as scheduled on September 30, 2014. The Government offered exhibits (GE) marked as GE 1 through GE 8, which were received and admitted into evidence. Applicant testified. She submitted exhibits (AE) marked as AE A through AE K, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on October 16, 2014. I held the record open until October 21, 2014, for Applicant to submit additional matters. Applicant timely submitted AE L - AE T, which were received and admitted without objection. The record closed on October 21, 2014.

### **Procedural and Evidentiary Rulings**

#### **Notice**

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of her right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. After consulting with counsel, Applicant affirmatively waived this right under the Directive. (Tr. 10.)

#### **Motions**

At the beginning of the hearing, Department Counsel moved to amend allegation 2.d of the SOR to conform with the evidence. Department Counsel requested to change the last sentence of allegation 2.d from “You answered ‘No’ to this question, whereas, you knew and sought to conceal that you had a \$97 medical account turned over to a collection agency in addition to that information as set forth in subparagraph 1.g above.” to “You answered ‘No’ to this question, whereas, you knew and sought to conceal that information alleged in paragraph 1 above.” Applicant did not object to the requested amendment. The Motion to Amend the SOR is granted, and the SOR is amended as requested.<sup>1</sup>

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.e, 1.g, 1.i - 1.k, 2.a, and 2.b. of the SOR. Her admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶¶ 1.f, 1.h, and 2.c - 2.f of the SOR.<sup>2</sup> She also provided additional information to support her request for eligibility for a

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<sup>1</sup>Tr. 8.

<sup>2</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. “That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and

security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 29 years old. When she completed her e-QIP on July 2, 2013, she worked full time as a security guard for a DOD contractor. She began this position in January 2012.<sup>3</sup>

Applicant is single, and she does not have any children. She graduated from high school in 2003 and joined the United States Marine Corps. She served on active duty from June 2003 until March 2008, primarily as a security guard, and in the Marine Corps Reserves until October 2010. While on active duty, Applicant was stationed in Okinawa, Japan, Nicaragua, Uganda, and South Korea. She received a good conduct medal in June 2006 and other letters of appreciation. She received an honorable discharge from the Marines in October 2010. For six months after her discharge from active duty, Applicant worked in Beijing, China for a United States government contractor. Applicant was unemployed from late 2008 until the end of 2011. She served in the Army Reserves from 2011 until 2013. She is now an inactive ready reservist.<sup>4</sup>

Applicant attends college full time on the GI Bill<sup>5</sup> through the Department of Veteran's Affairs (VA). She needs two more semesters of course work to complete her bachelor's degree in psychology. Applicant's college expenses are paid through the GI Bill.<sup>6</sup>

Applicant submitted 16 letters of recommendation from co-workers, supervisors, friends, roommates, and her mother. These individuals have known Applicant for many years. All praised her work integrity. They described her as hard working, reliable, and dependable. She has worked in high risk areas on behalf of the United States government. Several indicated that she did not spend her money foolishly and that she lived conservatively. All recommended her for a security clearance, and many indicated knowledge that she had not violated the rules for handling classified information. One individual had general knowledge about difficulties in Applicant's life. None of the individuals showed a knowledge of the security issues raised in the SOR.<sup>7</sup>

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events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>3</sup>GE 1; Tr. 24, 65-66.

<sup>4</sup>GE 1; AE K; Tr. 24, 65-66.

<sup>5</sup>"GI Bill" is a registered trademark.

<sup>6</sup>GE 1; Tr. 25.

<sup>7</sup>AE I; AE J.

## Financial

Applicant receives approximately \$840 a month income from the VA under the GI Bill. She also receives an additional \$477 a month from educational loans for a total monthly income of \$1,317. Her monthly expenses total approximately \$1,000 and includes \$375 for rent, \$125 for school books, \$80 for phone, \$125 for food, \$53 for gas and car insurance; \$100 on debt payment; and \$100 on miscellaneous and entertainment. She also budgeted another \$40 for possible debt payment. She has approximately \$315 a month remaining. Her food budget appears to be understated. Applicant provided a copy of her federal and state income tax returns for the years 2012 and 2013. Her adjusted gross income in 2012 was \$5,400 and in 2013, it was \$5,151. She received a federal tax refund of \$1,684 for the 2012 tax year and \$1,065 for 2013 tax year. She received a total of \$333 in state tax refunds for both years.<sup>8</sup>

The SOR identified 11 unresolved debts, totaling \$14,793.<sup>9</sup> SOR allegation 1.a concerned a veterinary bill for \$438. Applicant gave her dog to a friend in 2010. She believed her friend continued to use her veterinary services and had the expense placed on her account. She has not paid this bill, which she believed is incorrect. She has not verified the amount of the debt.<sup>10</sup>

The second debt (\$1,837) on the SOR (1.b) related to emergency care. Applicant believed that the VA had paid this bill because the VA provides her medical care and because she requested permission to receive this emergency care at a non-VA facility. She requested the VA to verify the debt and payment on September 22, 2014. She has not received a response.<sup>11</sup>

Applicant paid the \$91 debt in SOR allegation 1.c on August 18, 2014. She contacted the creditor holding the \$601 debt alleged in SOR 1.d and made a \$10 payment on this debt on September 13, 2014. This debt concerns a cable receiver lost by former roommates. Applicant has requested them to pay her for this debt, but they have not. The debt is not fully paid.<sup>12</sup>

The SOR listed an unpaid university debt of \$633 (1.e) and two VA debts (1.i - \$640 and 1.j - \$2,850). Applicant believed that the VA debts are for education. The July 10, 2013 credit report indicated that Applicant's VA debts had been paid even though later credit reports showed a debt owed. Applicant contacted the VA, which advised that her education debts had been paid. She also wrote the creditor holding the university

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<sup>8</sup>AE P - AE T.

<sup>9</sup>GE 6 - GE 8.

<sup>10</sup>GE 6 - GE 8; Tr. 30-33.

<sup>11</sup>GE 8 - GE 8; AE A; Tr. 27-30.

<sup>12</sup>AE B; AE C; Tr. 33-36.

debt for verification of the debt on September 22, 2014. She believed that the VA paid this debt. Applicant's benefits payment history indicated that the VA has sent payments to her schools over the last four years.<sup>13</sup>

The \$426 debt in SOR allegation 1.f is unknown to Applicant. She wrote the creditor for verification and information about the debt on September 22, 2014. She has not received a response. She disputed the \$502 debt in SOR allegation 1.h with the creditor on September 13, 2014. The creditor advised that this debt is resolved, but did not specify if the debt is not hers or paid. She believes that she does not owe the debt.<sup>14</sup>

Concerning the \$5,461 debt in SOR allegation 1.g, the collection agent for the creditor contacted Applicant in early 2013. Applicant made arrangements to pay the creditor \$100 a month, which is automatically deducted from her checking account. She began her payments in April 2013. As of August 2014, she had made 17 payments, which reduced the original balance of \$6,050 to \$4,350. She continues to make these payments.<sup>15</sup>

Applicant contacted the collection agency for the \$1,359 debt in SOR allegation 1.k, which relates to a gym membership. Applicant believed she had a month-to-month membership with the gym. She cancelled her membership by telephone and did not owe any money to the gym when she cancelled her membership. She is currently attempting to verify the debt and its amount. She has offered to pay \$10 a month towards the debt. She has not received a response from the collection agent.<sup>16</sup>

When she met with the Office of Personnel Management (OPM) investigator and reviewed her debts in August 2013, Applicant advised that she would contact her creditors. Her July 2013 credit report reflects that she resolved three other collection debts. Applicant did not present evidence of financial counseling.<sup>17</sup>

## **Personal Conduct**

Applicant completed her current e-QIP on July 2, 2103.<sup>18</sup> The SOR alleges that she falsified her answers on her e-QIP when she answered "no" to the following questions:

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<sup>13</sup>GE 6 - GE 8; AE D; AE L; AE M; Tr. 22, 37, 51, 74-75, 79-80.

<sup>14</sup>GE 6 - GE 8; AE E; AE F; Tr. 38-39, 43-44, 76.

<sup>15</sup>GE 6 - GE 8; AE F; Tr. 40-42, 76-77.

<sup>16</sup>GE 6 - GE 8; AE H; Tr. 48-50.

<sup>17</sup>GE 6.

<sup>18</sup>GE 1.

2.a Section 15 - Military History - Discipline

**In the last 7 years**, have you been subject to court martial or other disciplinary procedure under the Uniform Code of Military Justice (UCMJ), such as Article 15, Captain's mast, Article 135 Court of Inquiry, etc?

2.c Section 22 - Police Record (EVER)

Have you **EVER** been charged with an offense involving alcohol or drugs?

2.d Section 26 - Financial Record - Delinquency Involving Routine Accounts

Other than previously listed, have any of the following happened? **In the past seven (7) years**, . . . [have] you had bills or debts turned over to a collection agency?

The SOR alleges that she falsified her answer on her February 18, 2005 security clearance application (SF-86)<sup>19</sup> when she answered "no" to the following question:

2.e Section 24- Police Record - Alcohol/Drug Offense . . . Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?

The SOR alleges that she falsified her answer on her September 30, 2004 SF-86<sup>20</sup> when she answered "no" to the following question:

2.f Section 24- Police Record - Alcohol/Drug Offense . . . Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?

Finally, the SOR alleges that she falsified her answer on her e-QIP when she answered "yes" to the following question because she failed to provide information on a January 2011 arrest:

2.b Section 22 - Police Record

**In the last seven (7) years** . . . have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?

Applicant denied intentionally falsifying her 2013 e-QIP, 2005 SF-86, and 2004 SF 86 in her response to the SOR and at the hearing. When she completed her e-QIP,

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<sup>19</sup>GE 2. The summaries of her Personal Subject Interview indicate that the Office of Personnel Management (OPM) investigator did not discuss any past drug arrests with Applicant. GE 4; GE 5.

<sup>20</sup>GE 3. As stated previously, the OPM investigator did not discuss any past drug arrests with Applicant. GE 4; GE 5.

Applicant listed an arrest for driving while impaired (DWI) in November 2010. She did not list any other negative information on her security clearance applications.

During her Personal Subject Interview (PSI) on October 23, 2013, the Office of Personnel Management (OPM) investigator asked Applicant if in the last 10 years, she had been written up or had any violations under the UCMJ, and Applicant said no. The OPM investigator then asked Applicant about an August 2007 Article 92 curfew violation. Applicant told the investigator, and she testified at the hearing, that she had been out for the evening with other Marines. She returned to the barracks at midnight, which was one hour before her 1:00 a.m. curfew. She forgot to call the post and report her return. She was charged with a curfew violation under Article 92, and as punishment, she was reduced in rank, and fined a loss of pay. She told the investigator that she did not list this incident on her e-QIP because, in her eyes, it was a minor event and she did recall it when she was filling out her e-QIP. In her response to the SOR, she admitted the allegation and stated that she did not disclose the incident because she believed the time had lapsed due to a miscalculation by her about the time of the incident. At the hearing, she testified that she failed to list this incident because she forgot about it.<sup>21</sup>

Concerning the debts she did not list on her e-QIP, Applicant voluntarily told the OPM investigator about the debt in SOR allegation 1.g and explained the source of the debt and her monthly payment. She told the investigator that she had listed this debt on her e-QIP, which is inaccurate. The investigator confronted her with the other debts listed in the SOR. Applicant denied any knowledge of these debts. In her response to the SOR, Applicant indicated that she had not checked her credit report before completing her e-QIP. At the hearing, Applicant testified that she was not aware that many of the SOR debts were in collection until she got the SOR. On cross-examination, Applicant stated that she thought she needed to list only debts in collection and she did not know she had any debts in collection. Because she had a payment plan with the creditor in SOR allegation 1.g, she thought this debt was out of collection. She did not receive any collection notices, which she believed was because she moved many times.<sup>22</sup>

The SOR alleges that although she listed her 2010 DWI on her 2013 e-QIP, Applicant deliberately failed to list her January 2011 arrest for driving on a suspended license and driving without an ignition lock and an arrest as a 13-year-old for marijuana. Likewise, the SOR alleges that she deliberately failed to list the marijuana arrest on her 2004 SF-86 and 2005 SF-86. In her response to the SOR and at the hearing, Applicant denied any intent to deceive the Government. Applicant had no knowledge that her driver's license had been suspended after her November 2010 arrest. The court consolidated the 2010 and 2011 arrest cases for trial. When she appeared in court for these consolidated arrest cases, she understood from her lawyer that the 2011 arrest

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<sup>21</sup>GE 1; GE 5; Tr. 52-53, 91-96.

<sup>22</sup>GE 1; GE 4; Tr. 33-50, 72-79.

had been removed from her record. At the DOHA hearing, she added that at the time of her DWI arrest, her driver's license had not been taken from her and she never received a notice of hearing on the suspension of her license. She considered these arrests the same event as the cases were consolidated for trial. She further understood that if she completed six months of probation without any incidents, her case would be dismissed and off her record. Because the cases were consolidated, the charges were dismissed, and the charges were off her record, she did not think she had to list the 2011 arrest and charges.<sup>23</sup>

On January 17, 2011, the police charged Applicant with driving on a suspended license and with driving a rented, leased, or borrowed vehicle without an interlocking ignition device, both Class B misdemeanor offenses. Applicant provided a copy of the court docket sheet for her November 2010 and January 2011 arrests. After separate arraignments, both cases were initially scheduled for a pretrial conference on February 15, 2011. The pretrial conference was continued on February 14, 2011 until March 23, 2011 in both cases. Through counsel, Applicant filed a not guilty plea to the November 2010 charges of DWI, operating a vehicle without insurance and operating a vehicle without a license or registration, all misdemeanor offenses, and the January 2011 charges of driving on a suspended license and without ignition interlocking device. She requested a jury trial. The second pretrial conference was continued and reset for May 10, 2011 with both conferences at 9:15 a.m. with the same judge in the same court room. For the January 2011 arrest, the court found her guilty of driving on a suspended license based on a plea and dismissed the ignition device charge. The court held the plea in abeyance contingent upon no violations of driving on a suspended, denied or revoked driver's license, no new insurance-related violations, and payment of a \$750 fine. For the November 2010 charges, the plea to the DWI and disposition is no contest; the driving without insurance was a plea in abeyance conditioned upon no new insurance-related violations and no violations of driving without an ignition interlock device; and the operating without a license charge was dismissed. The court sentenced Applicant to 120 days in jail, then suspended the sentence; fined her \$1,405 and ordered the payment of a separate fee of \$400; ordered 48 hours of community service; and placed her on 18 months of probation. Applicant appealed her cases to the next court level. Her November 2010 case was set aside by the higher court on June 14, 2011 according to the docket sheet.<sup>24</sup>

Applicant did not list an arrest involving marijuana when she was 13-years old. When she completed her 2005 SF-86, her "gunny" (gunnery) sergeant told her that she did not need to disclose this arrest because it had been expunged. It is unknown if this arrest is based on federal or state law and was expunged under either federal or state law. The OPM investigator did not discuss this arrest with Applicant, and outside of

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<sup>23</sup>Response to SOR; GE 5; Tr. 53-56, 96-98.

<sup>24</sup>AE N; AE O.



SOR allegations 2.c, 2.e and 2.f, the record lacks any evidence of this arrest and the facts surrounding it. Applicant has not denied the arrest.<sup>25</sup>

## Policies

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 used 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 access to classified information will be resolved in favor 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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<sup>25</sup>Response to SOR; GE 4; GE 5; Tr. 57-59, 100-101.

Section 7 of Executive Order 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 concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems, reflecting a history of unpaid debts. Most of the debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; 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.

Applicant's financial problems began after she left active duty in March 2008. She accepted a job with a DOD contractor, which lasted until October 2008. She did not work for three years, although she attended college one semester. She lived with and cared for family members during this time. In the last three years, Applicant worked full time for about a year, earning minimum wages. She also served as a reservist for two years, which provided her with some income. She now attends college full time and receives VA benefits, which pays her college tuition and helps with her living expenses. In 2013, the creditor holding her largest debt (\$6,030) contacted her about repayment of her debt. Applicant and the creditor agreed to a monthly payment of \$100, beginning in April 2013. This payment has been made each month and continues. She has reduced this debt to about \$4,000. Given her limited monthly income Applicant's efforts to resolve this debt and one other small debt are reasonable. AG ¶ 20(b) applies.

Because she did not recognize the \$500 debt in SOR allegation 1.h, Applicant properly disputed this unknown debt with the collection agency. The collection agency notified Applicant that the matter is resolved. Although the letter indicating that Applicant's dispute is resolved failed to clearly state that the debt is paid, it is reasonable for Applicant to believe that she no longer owes this debt, particularly since the creditor has not made a demand for payment. Applicant provided documentation showing that her VA education loans are paid. She also paid one other small debt. She has made inquiries to determine the status of the remaining debts, including trying to determine if the debt in SOR allegation 1.f belongs to her, as she does not recognize this creditor. Applicant is not required to pay all her debts. Rather, she must show a meaningful track record for debt repayment. Applicant has a limited income, yet she is paying her largest debt monthly. She has sufficient income to resolve her other debts once she determines if the debt belongs to her, is unpaid, and is the correct amount. AG ¶ 20(c) applies and AG ¶ 20(e) applies to allegation 1.h. Applicant has mitigated the security concerns raised by her finances.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

The Government alleges four incidents of falsification by Applicant when she completed her 2013 e-QIP (SOR ¶¶ 1.a-1.d), one incident of falsification when she completed her 2004 SF-86 (SOR ¶ 1.e) and one incident of falsification when she completed her 2005 SF-86 (SOR ¶ 1.f). For AG ¶ 16(a) to apply, Applicant's omissions must be deliberate. The Government established that Applicant omitted material facts from her 2004, 2005, and 2013 security clearance applications when she answered "no" to questions asking about disciplinary actions during her military service and about her two undisclosed arrests. This information is material to the evaluation of Applicant's trustworthiness and honesty. Applicant denied intentionally falsifying her answers on her security clearance applications.

When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.<sup>26</sup>

Applicant's statement that she forgot about the Article 92 disciplinary action is not credible. The e-QIP question and the investigator's repeat of the question are clear about the information sought. Applicant knew she was disciplined for a curfew violation, which impacted her income and her rank for sometime. She deliberately failed to list this information on her e-QIP. Applicant's statements that she thought she needed to list only debts which were in collection are not plausible and are viewed as a post-hoc explanation for her failure to acknowledge her debts on the e-QIP. She had a duty to be

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<sup>26</sup>See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

forthright and candid in her e-QIP answers, and she was not. AG ¶ 16(a) applies to SOR allegations 2.a and 2.d.

When Applicant listed her 2010 DUI arrest, she placed the Government on notice that criminal conduct could be a security concern. Her belief that the January 2011 arrest and the November 2010 relate to each is not unreasonable given that the court combined both cases for purposes of hearing and sentencing because the second arrest stemmed directly from the DUI arrest in November 2010. Applicant's marijuana arrest, as a minor, occurred over 16 years ago. It is unknown if this arrest was under state or federal law. Under either, the arrest has been either sealed or expunged because she was a minor and thus, making the arrest not part of her criminal record. She asked for guidance in 2005 about revealing this arrest and was told that since it was expunged, she need not list it. She relied upon this advice again in 2013. Although the advice may have been in error, her reliance upon it shows that she did not have an intent at the time she completed her 2005 and 2013 security applications to hide this information from the Government. As for her failure to acknowledge the 2004 arrest, Applicant knew that the arrest would not be available for review because it had been expunged. Her failure to consider that this information should be revealed even though expunged is not evidence that she intended to hide this information from the Government. Intentional falsification as alleged in SOR ¶¶ 2.b, 2.c, 2.e, and 2.f. is not established under AG ¶ 16(a).

The record lacks any evidence that Applicant has been involved with marijuana since her arrest as a 13-year-old. Her involvement with marijuana more than 16 years ago does not create a vulnerability to exploitation, manipulation, or duress. AG ¶ 16(e) does not apply. SOR ¶¶ 2.b, 2.c, 2.e, and 2.f are found in favor of Applicant.

I have reviewed all the mitigating factors in AG ¶¶ 17(a)-17(f) and find that none of them apply to Applicant's intentional conduct as established under the disqualifying conditions.

### **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 an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

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." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). 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.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems began after her discharge from the Marines and because she was unemployed. The VA education debts are paid and have been resolved for some time. Although she has limited income, Applicant is paying, and has been paying, on her largest debt for more than 18 months. She recently paid another small debt and continues to seek information about the legitimacy of her remaining unresolved debts. She need not be debt free to hold a security clearance. She must manage her debts

and work on a plan to resolve them. Her VA education loans are paid, and she is working to identify the legitimacy of the remaining unpaid, smaller debts. She has a track record of resolving debts, although slowly because of her limited income. Of course, the issue is not simply whether all her debts are paid: it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. While some debts remain unpaid, they are insufficient to raise security concerns. (See AG ¶ 2(a)(1).) However, Applicant’s intentional falsification of her 2013 e-QIP raises serious concerns about her fitness to hold a security clearance because honesty, and truthfulness are at the core of a determination on whether an individual should be given a security clearance. Applicant’s actions reflect a violation of these principles and necessitate a denial of her request for a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her finances under Guideline F, but she did not mitigate the security concerns raised under Guideline E.

**Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.k:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For 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.

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MARY E. HENRY  
Administrative Judge