DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---	)	ISCR Case No. 15-00606
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

04/21/2016

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Decision

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GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On May 9, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.[1] On June 27, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective

[1] GE 1 (e-QIP, dated May 9, 2014).

September 1, 2006. The SOR alleged security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on July 30, 2015. On August 5, 2015, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on October 7, 2915. The case was assigned to me on October 15, 2015. A Notice of Hearing was issued on October 28, 2015, and I convened the hearing as scheduled on November 17, 2015.

During the hearing, five Government Exhibits (GE 1 through GE 5) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on November 25, 2015. I kept the record open to enable Applicant to supplement it.[2] She failed to timely submit any documents. The record closed on December 8, 2015.

Findings of Fact

In her Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.o.). She commented regarding the personal conduct allegations, but failed to specifically use the terms "admit" or "deny." Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 47-year-old employee of a defense contractor. She has been a custodial janitor with her current employer since March 2014. She previously held similar positions, as well as that of housekeeper, with other employers.[3] She dropped out of high school after completing the 11th grade, coinciding with the birth of her first child.[4] She has never served with the U.S. military.[5] Applicant does not currently hold a security clearance.[6] She reported that she was granted a secret security clearance in 2008, but that was during a lengthy period of voluntary unemployment (January 2008 until August 2013) after she gave birth to her second child, and that report appears to

[2] Among the items that I suggested to Applicant that she furnish me were the schedule of her bankruptcy petition that contains the list of creditors and accounts that were discharged under Chapter 7 of the U.S. Bankruptcy Code; character references; work performance appraisals; a personal financial statement reflecting her current finances; documented disputes; and correspondence from creditors. *See* Tr. at 57-67.

[3] GE 1, *supra* note 1, at 10-13: GE 2 (Personal Subject Interview, dated June 30, 2014), at 3-4.

[4] Tr. at 26; GE 2, *supra* note 3, at 3.

[5] GE 1, *supra* note 1, at 15.

[6] Tr. at 6.

be in error.[7] Applicant has never been married, although she currently resides with a cohabitant.[8] She has a son (born in 1987) and a daughter (born in 2009).[9]

Financial Considerations[10]

It is unclear when Applicant first experienced substantial financial difficulties, but it appears that several delinquent accounts existed as far back as mid-2004, or even earlier, for in May 2004, Applicant filed a bankruptcy petition under Chapter 13 of the U.S. Bankruptcy Code. A wage-earner plan was established under which Applicant was to make bi-weekly payments of $65 to the bankruptcy trustee for a period of 60 months. That plan was continued until January 2006 when Applicant elected to convert the case to one under Chapter 7 of the U.S. Bankruptcy Code. Applicant gave no reason for the desired conversion except that she wanted to "get it over with."[11] She apparently passed the "means test," and the conversion was permitted. On May 3, 2006, Applicant's unsecured, nonpriority debts were discharged.[12]

In late 2008, Applicant went on a short-term disability associated with the birth to her second child, drawing about $700 or $800 per month. After her child was born, she remained unemployed and received unemployment compensation and food stamps. She resided with her sister and also received periodic financial assistance from both her sister and her father.[13] During her lengthy period of unemployment, Applicant was under the impression that she did not have to file a federal income tax return for the tax year 2011 because she did not have any "earned" income, only the "unearned" benefits. In 2013, the Internal Revenue Service (IRS) contacted her and informed her that she owed $200. She purportedly entered into a payment plan in July 2014 and agreed to pay $30

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[7] GE 1, *supra* note 1, at 12, 26-27.

[8] GE 1, *supra* note 1, at 17.

[9] GE 1, *supra* note 1, at 18-19.

[10] General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 7, 2014); GE 5 (Equifax Credit Report, dated November 21, 2014); GE 2, *supra* note 3; GE 3 (Case Summary, dated May 8, 2006); Applicant's Answer to the SOR, dated August 5, 2015.

[11] GE 3, *supra* note 10, at 1-2; Tr. at 29-30.

[12] GE 3, *supra* note 10, at 3. In a bankruptcy filing, most debtors list potential creditors, even when the debt may have been resold or transferred to a different collection agent or creditor, to ensure notice, and reduce the risk of subsequent dismissal of the bankruptcy. If Applicant failed to list some debts on her bankruptcy schedule, this failure to list some debts does not affect their discharge. Absent fraud, in a no-asset bankruptcy, all unsecured, nonpriority debts are discharged when the bankruptcy court grants a discharge, even when they are not listed on a bankruptcy schedule. *See Judd v. Wolfe*, 78 F.3d 110, 114 (3d Cir. 1996); *Francis v. Nat'l Revenue Service, Inc.*, 426 B.R. 398 (Bankr. S.D. FL 2010), *but see First Circuit Bucks Majority on Discharge of Unlisted Debt in No-Asset Case*, American Bankruptcy Institute, 28-9 ABIJ 58 (Nov. 2009). There is no requirement to re-open the bankruptcy to discharge the debt. *Collier on Bankruptcy*, Matthew Bender & Company, Inc., 2010, Chapter 4-523, ¶ 523(a)(3)(A). Not all debts are discharged through bankruptcy. Priority debts, such as tax debts, student loan debts, and child support obligations, are generally not discharged through bankruptcy. Secured debts such as home mortgages and car liens are not discharged unless the security (home or car) is foreclosed or repossessed.

[13] Tr. at 27-29.

per month until the balance of $440 with interest is paid off.[14] Although Applicant stated that the IRS had furnished her with a notice that the account has been resolved, and she indicated an intention to submit it to me, she failed to do so. Accordingly, it is not clear if the federal income tax debt has been resolved.

Although Applicant's unsecured, nonpriority debts were discharged in May 2006, she apparently was unable to handle her new routine expenses. As a result, over the ensuing multi-year period, a number of new accounts were placed for collection, charged off, or went to judgment. Applicant had delinquent payday loans, automobile loans, storage accounts, medical accounts, cellular telephone accounts, and credit card accounts.

In addition to the bankruptcy and the federal income tax issue, the SOR identified 13 purportedly continuing delinquent accounts, totaling approximately $15,082, which had been placed for collection, charged off, or went to judgment. Although Applicant offered comments regarding each of the accounts, and claimed to have made contact with some of the creditors, she failed to submit any documentation to support her contentions pertaining to her actions or activities to resolve them. There is no documentary evidence that any of the accounts were placed in repayment plans or that payments were made for any of them. Although Applicant purportedly disputed several of the accounts discussed with an investigator from the U.S. Office of Personnel Management (OPM) in June 2014, to date, nearly two years later, she failed to submit any documentation to support her contentions or disputes. She also claimed that some of the accounts may have been duplications of other accounts, but once again, she failed to submit any documentation to support those contentions. There is no documentary evidence to indicate that Applicant made any payments on any of the SOR-related delinquent accounts, including one account with the minimal balance of $58.

Those unaddressed, unresolved, delinquent accounts are as follows: a payday loan with an unpaid balance of $265 that became a judgment in 2009 (SOR ¶ 1.c.); a cellular telephone account with a past-due balance of $1,763 (SOR ¶ 1.d.); a medical account with a past-due balance of $295 (SOR ¶ 1.e.); a medical account with a past-due balance of $295 (SOR ¶ 1.f.); a bank credit card with a past-due balance of $427 that was charged off (SOR ¶ 1.g.); a medical account with an unpaid balance of $58 (SOR ¶ 1.h.); a self-storage company account with a past-due balance of $166 (SOR ¶ 1.i.); a credit card account with a past-due balance of $799 that was charged off in 2008 (SOR ¶ 1.j.); a bank overdraft with a past-due balance of $726 (SOR ¶ 1.k.); an unspecified bank account with an unpaid balance of $300 that was charged off and transferred or sold to a debt purchaser who increased the past-due balance to $491 (SOR ¶ 1.l.); a regular unsecured loan with a high credit of $1,500 that was charged off and transferred or sold to a debt purchaser who purportedly increased the unpaid amount to $1,932 (SOR ¶ 1.m.); an automobile loan with a high credit of $11,522 (as opposed to the $7,564.55 that was alleged in the SOR) that was charged off, the car was repossessed, and the account was transferred or sold to a debt purchaser (SOR ¶

[14] GE 2, *supra* note 3, at 5; GE 1, *supra* note 1, at 28.

1.n.);[15] and a bank credit card with and unpaid balance of $300 that was sold to a debt purchaser (SOR ¶ 1.o.).

In November 2015, Applicant stated that her hourly wage was approximately $10 per hour. Based on a 40-hour work week, she generally works between 72 and 80 hours every two weeks. Her net take home pay if she works the 72-hour schedule provides her with $648 every two weeks. Her cohabitant generally earns $600 every two weeks. Applicant estimated that once the monthly expenses are paid, she sometimes has a monthly remainder of approximately $1,000 available for savings or discretionary spending. Nevertheless, because her cohabitant is a dialysis patient, his hours may be minimized, and their take-home pay may be reduced. Applicant has no money in her bank account and is not accumulating money because they actually live "paycheck to paycheck."[16]

While there is no testimony or documentary evidence that Applicant ever sought the services of a financial advisor, or that Applicant ever received financial counseling, because she went through the bankruptcy process, I have given her credit for completing the necessary financial training associated with the filing of a bankruptcy petition. There is a paucity of evidence to indicate that Applicant's financial problems are now under control.

Personal Conduct[17]

On May 9, 2014, when Applicant completed her e-QIP, she responded to questions pertaining to her financial record. Several of those questions in Section 26 – Financial Record – asked if, in the past seven years, she had any bills or debts turned over to a collection agency; if she had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; if she had been over 120 days delinquent on any debt not previously entered; or if she was currently over 120 days delinquent on any debt. Applicant answered "no" to those questions. She certified that the responses were "true, complete, and correct" to the best of her knowledge and belief,[18] but the responses to those questions were, in fact, incorrect, for at that time Applicant had several accounts that fell within the stated parameters.

[15] There was some speculation and discussion regarding this account and the timeframes involved for Applicant was of the opinion that the repossession of the vehicle occurred in 2004, and she was unsure if the account was a debt that was included in her bankruptcy discharge. Tr. at 44-46. The issue could have been resolved had she furnished a copy of the discharged debts during the post-hearing open period for submissions. *See* note 2, *supra*.

[16] Tr. at 51-56.

[17] During the hearing, just before the parties made their final arguments, Department Counsel moved to amend the SOR. The first motion was to correct the date alleged in SOR ¶¶ 2.a. and 2.b. by substituting the date May 9, 2014, for the one listed (May 6, 2014). The second motion was to withdraw SOR ¶ 2.a. There being no objection to either motion, both motions were granted. *See* Tr. at 68-69.

[18] GE 1, *supra* note 1, at 29, 32.

During her OPM interview, Applicant stated that her omissions were merely an oversight because she was not aware of the debts when she completed the e-QIP.[19] In her Answer to the SOR, while not specifically admitting or denying the allegation, she submitted what appears to be a new explanation for her answer to the e-QIP questions. She said that she did not remember checking "no" to the questions and claimed it was "not intentionally done and was an honest mistake."[20] During the hearing, she continued to claim that the omission "must have been an honest mistake."[21] She denied trying to lie or hide anything.[22]

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."[23] As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[24]

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

[19] GE 2, *supra* note 3, at 5-10.

[20] Applicant's Answer to the SOR, *supra* note 10, at 4.

[21] Tr. at 47.

[22] Tr. at 47.

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

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

In the decision-making process, facts must be established by "substantial evidence."[25] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[26]

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[27]

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."[28] Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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[25] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

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

[27] *Egan*, 484 U.S. at 531.

[28] *See* Exec. Or. 10865 § 7.

> 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. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts*"* is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations*"* may raise security concerns. In addition, a "failure to file annual Federal, state, or local income tax returns as required . . ." may raise security concerns under AG ¶ 19(g). Applicant has had a long-standing problem with her finances which existed as far back as mid-2004, or even earlier. Her unsecured, nonpriority debts were discharged under Chapter 7 or the U.S. Bankruptcy Code in May 2006. A number of accounts subsequently became delinquent and were placed for collection, charged off, or went to judgment. She failed to timely file her federal income tax return for the tax year 2011. AG ¶¶ 19(a), 19(c), and 19(g) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Evidence that "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*"* is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."[29] Under AG ¶ 20(e) it is potentially mitigating if "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the

[29] The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

> In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue."

AG ¶¶ 20(a), 20(d), and 20(e) do not apply. AG ¶¶ 20(b) and 20(c) minimally apply. The nature, frequency, and recency of Applicant's continuing financial difficulties since about 2004, despite having her unsecured, nonpriority debts discharged in 2006, make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Although she does not specifically attribute any one particular cause to her initial or current financial problems, she did mention her lengthy period of voluntary unemployment (January 2008 until August 2013) and the fact that her cohabitant is a dialysis patient. The specific impact of those factors, either individually or collectively, was not discussed. Although Applicant spoke about some of her efforts to address various delinquent debts, she offered no documentary evidence of a good-faith effort to resolve any of them. She has failed to address any of her delinquent accounts, including the one with a minimal balance of $58.

I have given Applicant credit for completing the necessary financial training and counseling associated with the filing of a bankruptcy petition. Applicant has no money in her bank account and is not accumulating money because, as she stated, they actually live "paycheck to paycheck." The overwhelming evidence leads to the conclusion that Applicant's financial problems are not under control. Applicant has not acted responsibly by failing to address her delinquent accounts and by failing to make limited, if any, documented efforts of working with her creditors.[30] Applicant's actions under the circumstances confronting her cast doubt on her current reliability, trustworthiness, and good judgment.[31]

Guideline E, Personal Conduct

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

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified 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.

The guideline notes a condition that could raise security concerns. Under AG ¶ 16(a), it is potentially disqualifying if there is a

[30] "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

[31] *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

> 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.

As noted above, on May 9, 2014, when Applicant completed her e-QIP, she responded to questions pertaining to her financial record. Several of those questions in Section 26 – Financial Record – asked if, in the past seven years, she had any bills or debts turned over to a collection agency; if she had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; if she had been over 120 days delinquent on any debt not previously entered; or if she was currently over 120 days delinquent on any debt. Applicant answered "no" to those questions. She certified that the responses were "true, complete, and correct" to the best of her knowledge and belief,[32] but the responses to those questions were, in fact, incorrect, for at that time Applicant had several accounts that fell within the stated parameters. As noted above, in her Answer to the SOR, Applicant failed to admit or deny the allegation.

Applicant's responses provide sufficient evidence to examine if her submissions were deliberate falsifications, as alleged in the SOR, or merely the result of misunderstanding the true facts on her part. She initially said her omissions were merely an oversight because she was not aware of the debts when she completed the e-QIP. She subsequently offered another explanation. She said that she did not remember checking "no" to the questions and claimed it was "not intentionally done and was an honest mistake." She denied trying to lie or hide anything.

I have considered Applicant's background, education, professional career, and her seemingly superficial understanding of financial matters, in analyzing her actions. Although she was offered the opportunity to submit character references attesting to her honesty, integrity, and trustworthiness, she chose not to do so. In the absence of such evidence, I am unable to credit her explanations for failing to provide accurate financial information on her e-QIP. Accordingly, as it pertains to the alleged deliberate falsification, AG ¶ 16(a) has been established.[33]

The guideline also includes examples of conditions that could mitigate security concerns that could mitigate security concerns arising from personal conduct. However,

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[32] GE 1, *supra* note 1, at 29, 32.

[33] The Appeal Board has explained the process for analyzing falsification cases, stating:

> (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred.

ISCR Case No. 03-10390 at 8 (App. Bd. Apr. 12, 2005) (citing ISCR Case No. 02-23133 (App. Bd. Jun. 9, 2004)).

none of them apply. Furthermore, Applicant's explanation is not credible and is insufficient to refute AG ¶ 16(a).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[34]

There is some evidence in favor of mitigating Applicant's conduct. She has been a custodial janitor with her current employer since March 2014, and she previously held similar positions, as well as that of housekeeper, with other employers. She was granted a secret security clearance in 2008. There is no evidence of misuse of information technology systems, mishandling protected information, substance abuse, or criminal conduct.

The disqualifying evidence is more substantial. Although her finances were rehabilitated with the May 2006 discharge of her debts, she subsequently returned to a pattern of being unable to maintain her accounts, and many of them went unaddressed for unspecified reasons. Accounts became delinquent, and several of them were placed for collection, charged off, or went to judgment. Applicant failed to timely file her federal income tax return for the tax year 2011. When asked about the existence of financial delinquencies, she lied and denied that there were any, despite the presence of a number of them. Although Applicant claimed to have made contact with some of the creditors, she failed to submit any documentation to support her contentions pertaining to her actions or activities to resolve them. There is no documentary evidence that any of the accounts were placed in repayment plans or that payments were made for any of them. Although Applicant purportedly disputed several of the accounts, she failed to

[34] *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *See also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

submit any documentation to support her contentions or disputes. She also claimed that some of the accounts may have been duplications of other accounts, but once again, she failed to submit any documentation to support those contentions. There is no documentary evidence to indicate that Applicant made any payments on any of the SOR-related delinquent accounts, including one account with the minimal balance of $58.

Applicant offered no evidence as to her reputation for reliability, integrity, trustworthiness, and good judgment. Applicant's long-standing failure over the years to voluntarily repay her SOR creditors, even in the smallest amounts, or to arrange even the most reasonable payment plans, reflects traits which raise concerns about her fitness to hold a security clearance. There are clear indications that Applicant's financial problems are not under control. Applicant's actions under the circumstances cast doubt on her current reliability, trustworthiness, and good judgment. Considering the absence of confirmed debt resolution and elimination efforts, Applicant's financial issues are likely to remain.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[35]

> In evaluating Guideline F cases, the Board has previously noted that the concept of '"meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. *See* Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated an essentially negative track record of voluntary debt reduction and elimination efforts, generally ignoring her delinquent SOR debts. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from her financial

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

considerations concerns and her personal conduct. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Withdrawn
Subparagraph 2.b:	Against Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge