

DATE: January 31, 2007

In re:

SSN:-----

Applicant for Security Clearance

ISCR Case No. 06-04920

DECISION OF ADMINISTRATIVE JUDGE

MARK W. HARVEY

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

Twenty-seven-year-old Applicant had fifteen alleged delinquent debts listed on her statement of reasons (SOR), totaling \$52,387. One debt was a duplication, and she disputed six debts. Others were less in magnitude than alleged. Twelve debts were not legally collectable because of the 3-year South Carolina statute of limitations. The SOR debts became delinquent between 1999 and 2004 primarily because of her husband's periodic unemployment. She did not establish sufficient efforts to resolve her delinquent debts. Her false answers on two questions on her Security Clearance Application concerning delinquent debts were not deliberate. She mitigated concerns about personal conduct, but not financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On December 2, 2004, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86).⁽¹⁾ On March 30, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.⁽²⁾ The SOR alleges security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an answer, notarized on May 9, 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 27, 2006. DOHA received the hearing record (R.) on December 12, 2006, and I received it on December 13, 2006. Based on Applicant's request at the hearing (R. 88-89), I agreed to hold the record open until January 1, 2007 to permit her to provide additional documentary evidence. On January 22, 2006, Department Counsel informed me that no additional

documentary evidence was received (Exhibits (Ex.) G, H).

FINDINGS OF FACT

As to the factual allegations under Guidelines F and E, Applicant admitted that she was responsible for the debts in SOR ¶¶ 1.a, 1.h, and 1.i. She said the debts in SOR ¶¶ 1.c, 1.e, and 1.j, were her husband's responsibility, and the debt in SOR ¶ 1.d was a duplication of the debt in SOR ¶ 1.c. She did not recognize the debts in SOR ¶¶ 1.k, 1.m, and 1.n, and she disputed the debt in SOR ¶ 1.l asserting it was Medicare's responsibility. She did not address the debts in SOR ¶¶ 1.b, 1.f, and 1.g. In regard to the allegations that her answers to Questions 38 and 39 of her SF 86 were deliberately false, she said she did not deliberately provide false information. She misunderstood the requirement. Moreover, she provided information about her most significant delinquent debts. 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 27 years old (R. 5).⁽⁴⁾ She is a high school graduate (R. 5). She was married on June 6, 1998 (R. 39). Her three children are ages 2, 4 and 6 (R. 39).⁽⁵⁾ She has no prior military service.⁽⁶⁾ She needs a clearance so she can enter restricted areas for cable fabrication (R. 32).

The following table lists the amounts of the SOR debts and when they were charged off and placed for collection.

SOR Paragraph	SOR Amount	Account Type and Date Charged Off or Placed for Collection
¶ 1.a	\$233	Department store account debt-Aug. 1999 (R. 47)
¶ 1.b	\$5,085	Disputed vehicle repossession debt-Mar. 2000 (R. 41, 57; Ex. A)
¶ 1.c	\$1,487	Computer purchase debt-June 2000 (R. 50-52)
¶ 1.d	\$2,091	Duplication with ¶ 1.c-July 2000 (R. 52-53)
¶ 1.e	\$1,737	Finance company debt-July 2000 (R. 53)
¶ 1.f	\$30,856	Mobile home repossession debt (reduced to \$18,950 after sale of mobile home) - July 2000 (R. 60-61)
¶ 1.g	\$9,313	Vehicle repossession debt (reduced to \$7,645 because of payment before repossession) -Sep. 2001 (R. 61-64)
¶ 1.h	\$205	Telephone services debt-Oct. 2001 (R. 64)
¶ 1.i	\$67	Disputed debt-Apr. 2002 (R. 55, 65; Ex. A)
¶ 1.j	\$152	Telephone services debt-May 2002 (R. 66-67)
¶ 1.k	\$213	Disputed medical services debt-Mar. 2003 (R. 67-70; Ex. A)
¶ 1.l	\$709	Disputed medical services debt-Dec. 2003 (R. 55, 67-70; Ex. A)
¶ 1.m	\$50	Disputed medical services debt-June 2004 (R. 55, 67-70; Ex. A)
¶ 1.n	\$54	Disputed telephone services debt-June 2004 (R. 70; Ex. A)
¶ 1.o	\$135	Television services debt-Nov. 2004 (R. 70-71)

The debt in SOR ¶ 1.b involved the repossession of Applicant's truck in 2000. She was unable to make one of the monthly payments (R. 42). Her next payment was a double payment, but it was \$25 short (R. 42-43). The finance company agreed to accept the payment anyway, and authorized her to pay \$25 extra the following month (R. 42-43). Then the finance company repossessed the truck because the payment was \$25 short without advance notification to Applicant (R. 42). The finance company refused to return the truck unless Applicant paid the loan in full (R. 43).

The debt in SOR ¶ 1.g involved the repossession of Applicant's car in 2001. Applicant fell behind in her payments by

two months, and her husband was unemployed (R. 63). Applicant called the creditor and told the creditor to repossess her car (R. 63).

In September 2006, Applicant paid a credit improvement company (CIC) \$300 to help her with her creditors and to improve her credit (R. 48). CIC sent the SOR creditors a letter asking for the status of Applicant's debt, and requested an amount to settle the creditor's account (R. 56-58). If the creditor failed to respond to CIC's inquiry, the CIC indicated that the result of their investigation is the debt is "DELETED" (Ex. A at 1). In the 60 days preceding Applicant's hearing, only one creditor responded to CIC's letters. The creditor in SOR ¶ 1.o offered to settle their debt for \$81 (R. 60, 70-71, 87). CIC did discuss as part of their contract, the process for resolving or settling debts, and how to improve one's credit ratings (Ex. A). CIC did not provide and Applicant has not received any debt counseling (R. 87, 94).

Applicant believed that the debts in SOR ¶¶ 1.k, 1.l, and 1.m were the responsibility of Medicare and disputed them (R. 67-70). According to CIC's report, SOR ¶¶ 1.k, and 1.l remained on her credit report as delinquent accounts, and SOR ¶ 1.m was "DELETED" after their investigation (Ex. A at 1, 4).

She attributed her financial problems to her husband's periodic unemployment (R. 39). He would quit his jobs, and they would not receive income from unemployment (R. 40). In order to care for her young children, she left employment with the government contractor, and was not employed outside her home from September 22, 2000, until November 29, 2004 (R. 40). At the time she returned to work in 2004, her husband had been unemployed for five months (R. 44).

A witness (W), who supervises Applicant, and has known her as a friend for ten years, described her as truthful, dependable, hard-working, and knowledgeable concerning her employment (R. 23-24). W attributed her financial problems to her husband's unemployment and failure to provide financial support to her (R. 27). W's supervisor (S), who has known Applicant for more than two years, said Applicant is one of his best employees (R. 29-31). She is paid \$12 per hour (R. 36). She is trustworthy, truthful and an outstanding employee (R. 34). In October 2006, she received the Employee of the Month award for an office of 350 employees (R. 31; Ex. B and D). S reasoned that her husband's sporadic unemployment because of his work in a seasonal type of repair business was the cause of Applicant's financial problems (R. 31). His company hired Applicant's husband in October 2005, and now both of them should be receiving steady, consistent incomes, which he predicted would help establish financial responsibility (R. 31, 74). Prior to her hearing, S told Applicant that it was important for her to get credit reports and determine what she could do to correct her financial problems (R. 33). He did not discuss financial counseling with her (R. 33-34). Other witnesses described Applicant as intelligent, diligent, professionally competent, helpful, and a person of high integrity with a positive attitude towards her job and family (Exs. B-E).

Applicant and her husband's gross salary was \$4,883 per month, her net salary is \$3,558 per month (R. 76-77). She listed monthly household expenses as follows: rent (\$750), groceries (\$700), clothing (\$50), utilities (\$300), telephone services (\$100), car expenses (\$803), daycare (\$600), and miscellaneous (\$00) (R. 78-82). After expressing some confusion about her expenses, she concluded that her family had sufficient income to pay all of her family's expenses, but there was no money remaining to pay her delinquent debts (R. 82).

Applicant said on November 27, 2006, she could show progress on her recent debts if the record was held open until January 1, 2007 (R. 88, 99). Applicant did not provide any documents after the hearing terminated documenting such progress (Ex. H).

Question 38 of Applicant's security clearance application asks, "[i]n the last 7 years, have you been over 180 days delinquent on any debt(s)?" and Question 39, asks "[a]re you currently over 90 days delinquent on any debt(s)?" When she completed her security clearance application on December 2, 2004, she answered, "Yes" to question 38 and disclosed the debts in SOR ¶¶ 1.b (\$5,085); 1.f (\$30,856); and 1.g (\$9,313).⁽⁷⁾ These three SOR debts total \$45,254. Applicant answered, "No" to question 39. For question 38, she explained she had forgotten about the other debts that were over 180 days delinquent (R. 72). For question 39, she said she thought the information sought was debts delinquent between 90 and 180 days, and no debts fell within that range (R. 72-73). After considering all the record evidence, I find that she was sincere and truthful about her intent, and her answers on questions 38 and 39 of her SF 86 were honest mistakes, rather than deliberate lies.

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider Enclosure 2 of the Directive, which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

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 in Section E2.2, Enclosure 2, of the Directive. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision. 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 decision.

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1: (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.

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that the issuance of the clearance 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."⁽⁸⁾ The government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence and prove a mitigating condition. Directive ¶ E3.1.15 provides, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." The burden of disproving a mitigating condition never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁽⁹⁾

A person who seeks access to classified information 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 access to classified information. Decisions under this Directive 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.

The scope of an administrative judge's decision is limited. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance 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." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. 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.

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:

Guideline F (Financial Considerations)

The government has met its initial burden under Guideline F. Applicant's initial failure to pay her debts is of concern, especially in light of her desire to have access to the nation's secrets. Under Guideline F (Financial Considerations), "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. 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 classified information.

Two Financial Considerations Disqualifying Conditions (FC DC) could raise a security concern and may be disqualifying in this case. FC DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. FC DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's actions in initially failing to satisfy her outstanding financial obligations give rise to FC DC 1 and 3. In her response to the SOR, Applicant admitted she was responsible for several of the fifteen debts listed on the SOR. She recognized that her debts became delinquent because her family spent too much money, and had too little income. 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. [\(10\)](#)

A security concern based on financial problems can be mitigated by substantial evidence under FC MCs 1 or 2 that "the behavior was not recent" or "it was an isolated incident." Directive ¶¶ E2.A6.1.3.1 and E2.A6.1.3.2. The Directive 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, [\(11\)](#) I conclude FC MCs 1 and 2 do not apply because Applicant had multiple delinquent SOR debts at the time of her hearing, and she is not making payments on any SOR debts.

Applicant disclosed some information to support consideration of FC MC 3, "the 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)." Directive ¶ E2.A6.1.3.3. She indicated she was unemployed from September 22, 2000, until November 29, 2004, and her husband has been unemployed periodically during that same period. However, her financial difficulties remain largely unexplained. Although unemployment caused her financial problems, she has not provided enough information about changes in her financial situation, with linkage to the resolution of her delinquent debts after she and her husband were both employed by the contractor to warrant full application of FC MC 3. From the date the SOR was issued (March 30, 2006), to the date the record was closed (January 1, 2007), Applicant has been on notice of the SOR debts. Nevertheless, she has not paid any of her SOR creditors anything, or even promised to pay any of them anything. [\(12\)](#)

FC MCs 4 and 6 can mitigate a security concern arising from financial problems when, "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," or "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Directive ¶¶ E2.A6.1.3.4 and E2.A6.1.3.6.

Based on the sincerity of her testimony, and some indicia of improved financial self-discipline, I have some confidence that she is on the right track towards correction of her financial problems. She receives partial credit under FC MC 4 because there is sufficient evidence that she has begun to receive financial or credit counseling. [\(13\)](#) However, there is insufficient evidence that her financial problems are being resolved or are under control.

FC MC 6 does not apply because there is insufficient information to establish that Applicant showed good faith in the resolution of her debts. [\(14\)](#) She does, however, receive some credit in the whole person analysis, *infra*, for the application of the 3-year South Carolina statute of limitations, which applies to all of her SOR debts, except the debts in SOR ¶¶ 1.m, 1.n, and 1.o. *See* S.C. Code. Ann. § 15-3-530. The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[iled] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted).

The reduction in the magnitude and number of her debts that creditors can legally enforce because of the application of the statute of limitations has also reduced her potential vulnerability to improper financial inducements. The degree that she is "financially overextended," is also greatly reduced. However, it does not negate her past conduct which failed to take timely actions to resolve her financial jeopardy. Moreover, she has not provided sufficient information about how she attempted to resolve or repay her SOR debts, beyond working with CIC to improve her credit. In sum, she has not demonstrated sufficient effort to resolve financial concerns because over the last 12 months she has not paid or settled any of her delinquent SOR debts.

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." Directive ¶ E2.A5.1.1.

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." Directive ¶ E2.A5.1.2.2. 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." Directive ¶ E2.A5.1.2.3.

For PC DCs 2 and 3, Applicant gave an incorrect or incomplete answer to questions 38 and 39 of her 2004 SF 86. The evidence of record, however, does not establish deliberate falsification. Although she admitted preparing her SF 86, and answering incorrectly, she did not fully understand the question, or the information the government sought. ⁽¹⁵⁾

Her statements show confusion about which debts were supposed to be disclosed. At the time she completed her SF 86, she thought that the answers she provided were correct.

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." Directive ¶ E2.A5.1.3.1. The allegations in SOR ¶¶ 2.a and 2.b are not established by substantial evidence because her erroneous statements do not constitute deliberate falsifications.

"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 Directive provision E2.2.1. As noted above, Applicant's failure to make progress resolving her SOR debts is a serious, ongoing, long-term problem and is sufficiently serious to be a security concern. E2.2.1.1. Her actions were knowledgeable and voluntary. E2.2.1.2 and E2.2.1.5. Some of her SOR debts are currently unpaid and unresolved. E2.2.1.3. She is 27 years old, sufficiently mature to be fully responsible for her conduct. E2.2.1.4. The motivation for her failure to pay her debts was caused by low income as well as poor

financial choices. E2.2.1.7. A person "who is financially overextended is at risk of having to engage in illegal acts to generate funds" and as such there is the potential for pressure and exploitation. E2.A6.1.1 and E2.2.1.7. The likelihood of recurrence cannot yet be determined because insufficient evidence was presented about improvement in her financial situation, and corroborating evidence of change is sparse. E2.2.1.6 and E2.2.1.9. The absence of evidence of any prior security violation, her forthright and candid statement at her hearing, and her evident sincerity about making financial progress all weigh in her favor. However, there is a paucity of supporting evidence of actions taken to establish her financial rehabilitation. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude she has not mitigated the security concerns pertaining to financial considerations, but she has mitigated security concerns about her personal conduct.

The evidence leaves me with grave questions and doubts as to Applicant's security eligibility and suitability. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"⁽¹⁶⁾ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive. Applicant has failed to mitigate or overcome the government's case. For the reasons stated, I conclude she is not eligible for access to classified information.

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

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraphs 1.e to 1.h: Against Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: Against Applicant

Subparagraphs 1.k to 1.m: For Applicant

Subparagraph 1.o: Against Applicant

Paragraph 2., Guideline E: FOR APPLICANT

Subparagraphs 2.a and 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 a security clearance for Applicant. Clearance is denied.

Mark W. Harvey

Administrative Judge

1. Ex. 1 (Electronic Standard Form (SF) 86, Security Clearance Application) is dated December 2, 2004, on the first and last pages. Applicant's signature appears on the last page. There is an allegation of falsification of this SF 86 in SOR ¶¶

2.a and 2.b. Page 2 of Applicant's SF 86 was missing from Ex. 1 when it was admitted into evidence.

2. Ex. 6 (Statement of Reasons (SOR), dated March 30, 2006). Exhibit 6 is the source for the facts in the remainder of this paragraph.

3. Ex. 7 (Applicant's response to SOR was notarized on May 9, 2006) is the source for the facts in this paragraph.

4. Ex. 1, *supra* n. 1 at 1 (date of birth).

5. *Id.*, question 9, at 5 (relatives).

6. *Id.*, question 11, at 5.

7. Her remaining SOR debts total \$7,133, and as indicated on the table, *supra*, there is a duplicated debt and several disputed debts.

8. "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).

9. "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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

11. *See* 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.

12. "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his 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)).

13. *See* ISCR 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FCMC 6 for debts being resolved through garnishment).

14. The 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.).

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

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

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

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