

DATE: January 30, 2007

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In re:

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SSN: -----

Applicant for Trustworthiness Determination

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ADP Case No. 06-12738

## **DECISION OF ADMINISTRATIVE JUDGE**

**MARK W. HARVEY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

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

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Fifty-six-year-old Applicant had five alleged debts listed in the statement of reasons (SOR). Her debt problems resulted from her husband's unemployment, and underemployment. She disputed three SOR debts, asserting they were solely her husband's responsibility. Two SOR debts were paid. Two of the three disputed SOR debts were beyond the 3-year South Carolina statute of limitations for debts. The creditor for the largest, disputed SOR debt agreed that it should be removed from her credit reports. She currently has no legally enforceable, delinquent debts. For the last three years, she has been financially responsible. She has mitigated concerns about financial considerations. Eligibility for an ADP I/II/III position is granted.

### **PROCEDURAL RULING**

The Statement of Reasons (SOR) does not cite or refer to Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, but it does cite DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. A memorandum from the Deputy Under Secretary of Defense (Counterintelligence and Security) to Director, Defense Office of Hearings and Appeals (DOHA), dated November 19, 2004 states DOHA shall utilize provisions of the Directive to resolve contractor cases involving trustworthiness determinations. In this case, the pertinent disqualifying and mitigating conditions in the Regulation and the Directive are the same. The Regulation, paragraph C8.2.1 provides that the procedural rules of the Directive apply for contractor personnel.

### **STATEMENT OF THE CASE**

On August 18, 2004, Applicant applied for a public trust position and submitted a Questionnaire for Public Trust Positions (Standard Form (SF) 85P).<sup>(1)</sup> On August 31, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a SOR to her, pursuant to the Directive and the Regulation.<sup>(2)</sup> The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA recommends that Applicant's case be

submitted to an administrative judge for a determination that Applicant is not eligible for occupying an ADP I/II/III position.

In a notarized answer, received at DOHA on September 30, 2006, Applicant responded to the SOR allegations, and elected to have her case decided at a hearing.<sup>(3)</sup> On October 31, 2006, the case was assigned to me. The hearing was held on November 30, 2006. At her hearing I approved Applicant's request that I hold the record open so she could submit additional documentary evidence (R. 44-46, 60). DOHA received the transcript of the hearing on December 13, 2006, and I received it on December 14, 2006. Department Counsel had no objection and I admitted the additional evidence (Exhibits F-I) she provided on December 8, 2006, and January 3, 8, and 12, 2007.

### **FINDINGS OF FACT**

As to the factual allegations under Guideline F, Applicant admitted that she and/or her husband were responsible for the five debts listed on the SOR.<sup>(4)</sup> 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 56-years-old.<sup>(5)</sup> For the last twelve years, she has been employed by a United States government contractor and is involved with processing sensitive medical records.<sup>(6)</sup> In addition to her work for a government contractor, she has a part-time job caring for a handicapped adult (R. 24). She previously worked for a dentist for 12 years, and for a hospital for 14 years (R. 47). She has no prior military service.<sup>(7)</sup> She has completed several courses at a technical school.<sup>(8)</sup> Applicant was married on October 28, 1972, and has three children (born in 1980, 1985 and 1987) (R. 22; Exhibit 7 at 8). Her three children are all attending college (R. 22).

Applicant's husband was making \$60,000 to \$70,000 per year and she was making \$14,000 per year working for a defense contractor before he lost his high-paying job in February 2000.<sup>(9)</sup> He subsequently went from job to job working at various car dealerships. He attempted to start his own business. A year or so later, he found a job, which paid about \$20,000 per year (R. 23). They could not pay their mortgage, and their home went into foreclosure (R. 23). They have been separated for over four years (R. 23). Their daughter had medical problems and an eating disorder (R. 23). Prior to her divorce, Applicant's husband physically assaulted her (R. 23). When she was living with her husband, he took care of the financial responsibilities, and paid the family's debts (R. 32, 48). After their relationship deteriorated, she was unable to communicate with him about financial matters (R. 48).

On May 3, 2006, Applicant's divorce was final (Exhibit 7 at 13). In regard to marital debts, the divorce decree did not list any, but it did specify, "each party shall return to the other all credit cards on accounts for which the other is the sole holder, and shall make no further charges thereon. The parties represent and affirm that they have made no additional charges to the accounts of the other. In the event such charges have been made, the party making them shall pay the other the amount of said charges" (Exhibit 7 at 17). The divorce decree does not allocate any of the couple's debts, and even if it did, the creditor must receive notice of the divorce litigation, which provides an opportunity for the creditor to contest the release or allocation of financial responsibilities. *See* S.C. Code. Ann. § 20-7-477.

About three years ago, Applicant and her husband considered filing for bankruptcy.<sup>(10)</sup> They paid a fee to an attorney. Her husband had approximately \$270,000 in debt. She was unable to learn whether her husband still intended to file for bankruptcy because of their divorce (R. 35). Although he did not list the particular debts, he generally admitted responsibility for many debts (R. 36; Exhibit C at 19-20).

The debt in SOR ¶ 1.a (\$6,487) was for a charge card that was charged off in February 2004. A 2004 credit bureau report (CBR) indicates the account was opened in November 2003; the credit limit was \$6,225; the amount owed is \$6,487; the last activity on the account was in February 2004; and Applicant is an authorized user (Exhibit 3 at 3). According to the creditor, Applicant's former husband is on the account, and she is not (R. 25-27). The creditor decided that she could not obtain account information because she is not on the account (R. 26-28; Exhibit A at 22; Exhibit B at 13).

The SOR ¶ 1.b (\$838) debt is for car repair or parts, and it was charged off in May 2000. Applicant's former husband is on the account, and she is not (R. 29-31). A bill from the SOR ¶ 1.b creditor, dated December 25, 2002, is addressed to Applicant's husband, not to Applicant (Exhibit A at 23). A creditor representative told Applicant she was not responsible for this debt, and she sent a letter to the creditor documenting her lack of responsibility (Exhibit F at 3, 9).

The SOR ¶ 1.c (\$621) debt is for a department store account that was charged off in May 2002. She accepted responsibility for this debt (R. 31-32; Exhibit B at 20-21). The creditor agreed to accept \$310 as payment to settle the debt (R. 31; Exhibit A at 30-32; Exhibit B at 21-22). She paid the creditor's settlement amount. *Id.* She did not pay the debt earlier because she was focused on paying her family's medical debts (R. 33).

The debt in SOR ¶ 1.d (\$12,985) for a credit card was charged off in May 2002. A 2004 credit bureau report (CBR) indicates the account was opened in May 1978; the credit limit was \$12,985; the amount owed is \$12,985; the last activity on the account was in May 2002; and Applicant is the individual account holder (Exhibit 3 at 4). Applicant had an account with the same bank and her account was paid off (R. 34). She had no access to the account in SOR ¶ 1.d, and had no knowledge of signing any credit applications as a joint user (R. 34). An undated letter from the SOR ¶ 1.d creditor offered to issue a credit card to Applicant's spouse, and indicated one credit card was issued (Exhibit C at 10). On December 5, 2006, she wrote the SOR ¶ 1.d creditor denying responsibility for this account, asking for proof, if any, that she was responsible for this account (Exhibit C at 15-17; Exhibit F at 6). She asked the SOR ¶ 1.d creditor to contact credit report bureaus and inform them that she was not responsible for that delinquent debt. *Id.* On January 12, 2007, she provided a letter from the SOR ¶ 1.d creditor stating the creditor agreed that the debt should be removed from her credit reports and promising to so notify the three largest credit bureau reporting companies (Exhibit I).

The SOR ¶ 1.e (\$104,000) debt pertains to a home-mortgage account. Applicant and her husband purchased their residence in 1993 (R. 37). Her husband refinanced their loan in 2000 (R. 37). It went into foreclosure in 2001 (R. 37, 40). At the hearing, she said she was not aware of the sale price at the foreclosure sale (R. 38, 42-43). She subsequently learned her residence was sold on January 14, 2003, and the sale price was \$121,670 (Exhibit F at 5). She sent a letter to the creditor asking the creditor to contact credit report bureaus (CBR) and inform the CBRs that there was no delinquent debt (Exhibit F at 4). On December 13, 2006, the creditor responded asking Applicant for more account information (Exhibit G at 4). On December 20, 2006, she provided all the information she had regarding this mortgage account (Exhibit G at 2).

Her income per year is \$20,000 (R. 38-39). Except for the five debts listed on the SOR she is current on all of her bills (R. 41). She was unsure about her legal responsibilities on the five SOR debts as opposed to her husband's responsibilities (R. 40-41).

Applicant provided a personal financial statement (PFS) at her hearing.<sup>(11)</sup> Her net salary for both jobs totaled \$1,585 per month, and her expenses totaled \$906 per month. She listed monthly household expenses as follows: rent (\$600), groceries (\$0), clothing (\$0), utilities (\$177), car expenses (\$0), and miscellaneous (\$0). She provided the following debts: four credit cards with total monthly payments of \$129. After deducting all expenses and debt payments, she had a positive cash flow of \$679 per month. Her PFS did not list assets or the amounts owed on her credit cards. She provided evidence of payment of other, non-SOR debts,<sup>(12)</sup> and evidence of how she obtained the extra money to pay these debts (Exhibit D at 9). She maintains a budget, and her payments are timely.

Applicant's fiancé was formerly her supervisor at the government contractor. He described her as trustworthy, truthful, diligent, and in the top ten percent of the contractor's employees (R. 49-54). He is aware of her current financial circumstances, and confirmed that she is current on her bills (R. 51). He said if she discovered that she owed \$20,000 on her foreclosed house, and \$12,000 on the bank card, he would support her financially stating, "I would go through anything for this woman" (R. 53). His salary is \$45,000 per year, and he has an Air Force retirement of about \$15,000 per year (R. 53). About \$2,000 per month remains after he pays his expenses and debts (R. 53).

## POLICIES

In the evaluation of an Applicant's security suitability for a public trust position, an administrative judge must consider Appendix 8 of the Regulation, which sets forth brief introductory explanations for each guideline, and the adjudicative

guidelines, which are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC).

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

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

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk." Regulation, Appendix 8. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision. Specifically, an administrative judge should consider the nine adjudicative process factors listed in the Regulation, Appendix 8, at 132: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

Since the protection of sensitive information is the paramount consideration, the final decision in each case is arrived at by applying the standard that eligibility for a public trust position is "clearly consistent with the interests of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by "substantial evidence."<sup>(13)</sup> The government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with Regulation, Appendix 8, that it is not clearly consistent with national security to approve eligibility for a public trust position. Directive ¶ E3.1.14. If the government meets its initial burden, the Applicant then has the burden of persuasion, that is to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. These same burdens of proof apply to trustworthiness determinations for ADP positions.

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

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

Applicant's actions in failing to satisfy her outstanding financial obligations give rise to Financial Considerations Disqualifying Condition (FC DC) 1, "a history of not meeting financial obligations," and FC DC 3, "inability or unwillingness to satisfy debts." The debt in SOR ¶ 1.c for \$621 was charged off in May 2002, and she did not settle and pay the creditor until November 23, 2006. This debt was delinquent for at least four years. Applicant established that the debt in SOR ¶ 1.e was paid through a foreclosure sale. It too was delinquent for a substantial period of time. Applicant has established that the debts in SOR ¶¶ 1.a and 1.b are her husband's debts, or at least she has provided sufficient evidence to dispute her responsibility for these two debts. The creditor for the largest, disputed SOR debt (¶ 1.d) agreed that it should be removed from her credit reports on December 31, 2006. She currently has no legally enforceable, delinquent debts. The credit reports are insufficient evidence to establish her responsibility in light of her sincere and convincing testimony that she was not responsible for these two debts.

FC DCs 1 and 3 apply to her failure to meet her financial obligations, and her admission that she was unable to pay the debts in SOR ¶¶ 1.c and 1.e, which then became delinquent and remained delinquent for several years. The government produced substantial evidence of these two disqualifying conditions. 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. <sup>(14)</sup>

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

The Regulation does not define "recent," and there is no "bright-line" definition of what constitutes "recent" conduct. Based on my evaluation of the record evidence as a whole, <sup>(15)</sup> I conclude FC Cs 1 and 2 do not apply because Applicant had multiple delinquent SOR debts. Payment of the debt in SOR ¶ 1.c on November 23, 2006, is simply too recent to merit application of FC MC 1.

FC MC 3 partially applies to the two debts in SOR ¶¶ 1.c and 1.e at issue because the debts became delinquent several years ago, and these delinquent debts were the result of her separation from her husband, his unemployment, and underemployment as well as his failure to provide adequate financial support to Applicant. Her financial situation was aggravated by her daughter's medical bills. This change in family circumstances is a good example of the unforeseen problems that trigger application of FC MC 3, causing financial problems that may be "largely beyond the person's control." I conclude that Applicant's statement about how her debts became delinquent is credible and sufficient to provide some credit under FC MC 3 in regard to her debts. Applicant, however, does not receive full credit for FC MC 3 because she waited until November 23, 2006, to pay the debt in SOR ¶ 1.c. There is a paucity of evidence showing how she endeavored to pay or resolve the debt in SOR ¶ 1.c for several years. However, her recent resolution of the remaining SOR debt, keeping her payments current, and demonstration of payment of other non-SOR debts warrants some credit, which will be applied in the whole person analysis, *infra*. Based on the sincerity of her testimony, and the other record indicia of improved financial self-discipline, I am confident that she is on the right track now towards

maintenance of her finances.

She did not receive financial counseling, but receives partial credit under FC MC 4 because there are clear indications (since November 23, 2006) that the problem is resolved and under control. In regard to application of the statute of limitations, FC MC 6 does not apply because there is insufficient information to establish that Applicant showed good faith in the resolution of her debts.<sup>(16)</sup> As previously stated, the debts in SOR ¶¶ 1.a, 1.b and 1.d are disputed, with a decision on December 31, 2006, by the SOR ¶ 1.d creditor agreeing that Applicant was not responsible for this debt. It should also be noted in the whole person analysis, *infra*, that the 3-year South Carolina statute of limitations is relevant to the debts in SOR ¶¶ 1.a and 1.b.<sup>(17)</sup> S.C. Code. Ann. § 15-3-530 lists the statute of limitations for various debts, including those in SOR ¶¶ 1.a and 1.b.<sup>(18)</sup> In *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005), the court succinctly explained the societal 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. *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. *See Webb v. Greenwood County*, 229 S.C. 267, 276, 92 S.E.2d 688, 691 (1956); *City of Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 231, 599 S.E.2d 462, 464 (Ct. App. 2004). Significantly, "statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be hailed [sic] into court to defend time-barred claims." *In re Elkay Indus., Inc.*, 167 B.R. 404, 408 (D.S.C. 1994). "Moreover, limitations periods discourage plaintiffs from sitting on their rights." *Id.* at 408-09. Statutes of limitations are, indeed, fundamental to our judicial system.

[Elimination of the potential debts in SOR ¶¶ 1.a and 1.b](#) through the statute of limitations will end the possibility of her potential vulnerability to improper financial inducements because she will no longer be "financially overextended." Of course, her past conduct in failing to resolve the financial jeopardy over the last several years is also relevant to security concerns.

### **"Whole Person" Analysis**

In addition to the enumerated disqualifying and mitigating conditions, I have considered the general adjudicative guidelines related to the whole person concept under the Regulation, Appendix 8, at 132. As noted above, Applicant's lengthy history of failing to meet her financial obligations and inability or unwillingness to satisfy her debts raise serious trustworthiness concerns. She is currently 56 years old. She was sufficiently mature to be fully responsible for her conduct. Her actions in generating or failing to resolve her debts in a timely fashion were knowledgeable and voluntary. Her debt problems resulted from voluntary decisions to purchase items. However, her inability to repay her debts resulted from her husband's unemployment, underemployment, and her separation from her husband. There is some evidence of rehabilitation, positive behavior changes, and improved circumstances as indicated by self-discipline and the complete absence of new delinquent debt over the last three years. Moreover, potential increased income through her marriage shows signs of financial improvement in the future. The potential for pressure, coercion, exploitation, or duress is low. Applicant is current on her recent debts, as her loans and credit cards are current. She has gradually eliminated her delinquent debts. Greater awareness of financial responsibilities will result in a continuously improving trend of financial circumstances. Moreover, stability in her employment, increases in her income, and reduction in her debt load show improved self-discipline, and greater consciousness of her financial responsibilities. In sum, the likelihood of recurrent debt problems is low.

In ISCR Case No. 04-07360 (App. Bd. Sep. 26, 2006), the Board noted that two SOR debts were paid through judgment and garnishment, one SOR debt was paid through settlement, and one SOR debt was never paid. Indeed for one SOR debt, the applicant did not even contact the creditor about payment. Nevertheless, the applicant showed that he reduced his overall debt by 95% and the Board affirmed the decision to grant that applicant a clearance.

Applicant's financial case is similar to ISCR Case No. 04-07360. One large SOR debt was paid through a foreclosure sale in 2003. One SOR debt was paid on November 23, 2006. One large SOR debt was successfully disputed. Two SOR debts remain under dispute, as her husband has the responsibility to pay these debts. One of her husband's unpaid SOR

debts are barred by South Carolina's 3-year statute of limitations. As such, the concern about current financial pressure that may result in illegal activity is significantly lower because as a matter of law, she no longer has any delinquent debts. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude she has mitigated the trustworthiness concerns pertaining to financial considerations.

Substantial evidence supports Applicant's trustworthiness eligibility and suitability. I take this position based on the law, my "careful consideration of the whole person factors"<sup>(19)</sup> and supporting evidence, as well as my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities. For the reasons stated, I conclude Applicant is eligible for a public trust position.

### **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 to 1e: For Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a public trust position. Eligibility for an ADP I/II/III position is granted.

Mark W. Harvey

Administrative Judge

1. Exhibit 1 (Questionnaire for Public Trust Positions, Standard Form (SF) 85P) is dated August 18, 2004 on the last page.
2. Exhibit 6 (Statement of Reasons (SOR), dated August 31, 2006). The SOR is the source for all the factual assertions in the remainder of this paragraph.
3. Exhibit 7 (Applicant's response to SOR, notarized on September 29, 2006, includes a 3-page cover letter and 33 pages of enclosures).
4. The source for all factual assertions in this paragraph is Exhibit 3, *supra* n. 3.
5. Exhibit 1, *supra* n. 1, at 1 (date of birth).
6. *Id.*, question 11 at 3 (employment).
7. *Id.*, question 16, at 6 (military service).
8. *Id.*, *supra* n. 1, question 10, at 2 (education).
9. R. 22, 24 and Exhibit A (notarized but undated statement of Applicant's former husband) at 15 are the sources for this sentence and the next three sentences. I note that her former husband said in the last paragraph of his letter that the attached documents show the accounts that are in his name, but no documents were attached.
10. R. 33, 35; Exhibit A (statement of Applicant's former husband, dated June 26, 2004) at 16; and Exhibit A (Social Security record of earnings) at 38-39 are the sources for this sentence and the next two sentences.
11. Exhibit E at 2. This paragraph is derived from Applicant's PFS.

12. See Exhibit A at 14, 18, 33-35; Exhibit B at 10; Exhibit C at 7-9; and Exhibit D at 28-31.

13. "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 (4<sup>th</sup> Cir. 1994).

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

15. *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.

16. 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.).

17. The debts in SOR ¶ 1.a (charged off in February 2004), and SOR ¶ 1.b (charged off in May 2000) will both be uncollectible in February 2007.

18. *See* ISCR Case No. 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating that partial credit was available under FCMC 6 for debts being resolved through garnishment).

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