

DATE: February 27, 2007

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In re:

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SSN: -----

Applicant for Public Trust Position

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P Case No. 06-12656

## **DECISION OF ADMINISTRATIVE JUDGE**

**MARK W. HARVEY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

#### **FOR APPLICANT**

Her brother was her Personal Representative

### **SYNOPSIS**

Applicant had seventeen alleged delinquent debts listed on her Statement of Reasons (SOR). The SOR debts initially became delinquent because of her unemployment in 2004. She agreed that she was responsible for five of the SOR debts. She made two or three payments in July-August 2006 on each of the five debts, however, she did not pay anything towards these five SOR debts during the five months preceding her hearing. She did not establish sufficient efforts to resolve her delinquent debts. Her false answer on one question on her Questionnaire for Public Trust Positions concerning delinquent debts was not deliberate. She did not intend to deceive the Government. She mitigated concerns about personal conduct, but not financial considerations. Clearance is denied.

### **STATEMENT OF THE CASE**

On September 15, 2004, Applicant submitted a Questionnaire for Public Trust Positions (SF 85P).<sup>(1)</sup> On October 4, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her,<sup>(2)</sup> 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, modified and revised.<sup>(3)</sup> The SOR alleges trustworthiness 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 her access to sensitive information, and recommended referral to an administrative judge to determine whether a such access should be granted, continued, denied, or revoked.

In an answer, notarized on October 18, 2006, Applicant responded to the SOR allegations, and elected to have her case decided at a hearing.<sup>(4)</sup> On December 21, 2006, the case was assigned to me. Applicant received fifteen days oral notice of her hearing, and waived her right to fifteen days written notice (record of proceedings (R.) 15). Her hearing was held on January 30, 2007. DOHA received the hearing record (R.) on February 7, 2007, and I received it on February 8,

2007.

### 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 to 1.d; 1.g, 1.h, 1.j, and 1.l to 1.p. She denied the other SOR-alleged debts without elaboration. In her response to the SOR, she did not address the falsification allegation in SOR ¶ 2.a. 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 47 years old (R. 44).<sup>(5)</sup> She is a high school graduate. She is not married (R. 45). Her daughter was born in 1984 (R. 49). Her daughter moved out of her home a year ago (R. 50). She has no prior military service. She has been employed by a government contractor since September 2004 and is involved in the processing of sensitive medical records (R. 26; Ex. C).

### **Financial Considerations**

The following table lists the amounts of the SOR debts and when they were charged off and placed for collection (as alleged in the SOR) and their current status.

SOR ¶	SOR Amount	Account type, date charged off or placed for collection, and some current status information
¶ 1.a	\$1,186	Department store account debt-July 1999 (R. 27)
¶ 1.b	\$3,511	Department store account debt-Aug. 1999 (R. 28-29; Ex. 2 at 2)
¶ 1.c	\$1,750	Bank account debt-Oct. 1999-Made 2 or 3 payments with last payment in Aug. 2006 (R. 29-30; Ex. 2 at 2)
¶ 1.d	\$33	Debt-Mar. 2000 (R. 30; Ex. 2 at 5)
¶ 1.e	\$3,729	Fund account-Mar. 2000 (R. 30-33; Ex. 2 at 6)
¶ 1.f	\$2,210	Fund account-Apr. 2000 (R. 31-33)
¶ 1.g	\$2,677	Fund account-July 2000-made 2 or 3 payments of \$50 each starting in Aug. 2006 (R. 33-35; Ex. 2 at 3)
¶ 1.h	\$914	Department store debt-Sep. 2000 (R. 35-36; Ex. 2 at 4)
¶ 1.i	\$560	Fund account-Dec. 2000 (R. 36)
¶ 1.j	\$401	Telephone services debt-Mar. 2001 (R. 37; Ex. 2 at 4)
¶ 1.k	\$2,757	Fund account-Apr. 2001 (R. 37-38; Ex. 2 at 6)
¶ 1.l	\$1,200	Department store debt-Apr. 2002-made 2 or 3 payments reducing debt from \$1,400 to about \$1,200 in Aug. 2006 (R. 38-39; Ex. 2 at 5)
¶ 1.m	\$1,311	Credit card account-July 2002 (R. 39-40; Ex. 2 at 4)
¶ 1.n	\$1,974	Department store debt-Sep. 2002-made 2 or 3 payments in Aug. 2006 (R. 40-41; Ex. 2 at 3)
¶ 1.o	\$1,004	Credit card debt-Feb. 2003-informed by creditor that account had zero balance (R. 41-42; Ex. 2 at 3)
¶ 1.p	\$542	Department store debt-June 2003-made 2 or 3 payments in Aug. 2006 current balance is \$542 (R. 42-43; Ex. 2 at 4)
¶ 1.q	\$4,100	Collection company account-July 2003 (R. 43; Ex. 2 at 3)

Applicant did not recognize the names of the debt collection companies that had taken over collection of seven of the accounts listed in SOR ¶¶ 1.a (R. 27), 1.b (R. 28), 1.d (R. 30), 1.e (R. 31-33), 1.f (R. 31-33), 1.i (R. 36), and 1.k (R. 37-38). For the debt in SOR ¶ 1.m, she remembered the original credit card, but was unable to contact the debt collector (R. 39-40). For the four debts in SOR ¶¶ 1.b (R. 28), 1.h (R. 35-36), 1.j (R. 37), and 1.q (R. 43), she contacted the creditors, but the creditors did not have any record of her account. For the debt in SOR ¶ 1.o, she contacted the creditor and the account showed a zero balance (R. 41). The ten debts in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.f, 1.h, 1.i, 1.j, 1.k, and 1.m are beyond the 4-year Texas statute of limitations.

Applicant was unemployed for six months in 2004 before obtaining her current employment with a government contractor (R. 44, 59). She has diabetes and high blood pressure (R. 45). Her gross pay per month is \$2,308 (Ex. B). Her net pay is \$1,734 per month (Ex. B). Her medical expenses are about \$250 per month (R. 45-46). She has about 18 months of car payments of \$311 per month remaining until her car is paid off (R. 47; Ex. B at 2). She currently has three active credit cards with balances of \$400, \$600, and \$7,000 (R. 48). The payments are current and not delinquent on these three credit cards (R. 48-49). She is paying off the two credit card debts with the least balances at the rate of \$100 each per month (R. 49). She has allocated monthly payments for a cell phone bill (\$140), car insurance (\$80), groceries (\$100), life insurance (\$29), and gasoline (\$50) (R. 50; Ex. B at 2). After paying expenses, she has \$638 discretionary funds remaining per month (Ex. B at 2).

Applicant has not received any formal financial counseling, however, her brother provided some counseling and budgeting assistance (R. 48, 58; Ex. B). She did not make any payments on any of her SOR debts after September 1, 2006, and her hearing was held on January 30, 2007 (R. 55).

Her performance appraisal indicates a professional, diligent caring employee, who is result-oriented and excels at providing timely and courteous assistance to customers (Ex. C). She uses good judgment when showing initiative and deciding when to seek assistance. *Id.*

### Personal Conduct

Question 22b of her September 15, 2004 SF 85Ps asks, "**YOUR FINANCIAL RECORD** Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government." (6) Applicant answered, "No." SOR ¶ 2.a alleges that this answer is false. The following colloquy between Department Counsel and Applicant provides her explanation for answering, "No" to Question 22b:

Q. You said you misunderstood the question. Can you tell us what you thought at the time when you were filling out this application?

A. Well, if I had anything over 180 days, and I wasn't paying on anything over 180 days for years, and I just didn't have anything that I was paying on, so I thought I didn't have it.

Q. Let me see if I can - - tell me if I'm getting it wrong - - try to figure this out. You're saying because you weren't making payments on any of these debts, you didn't consider them delinquent debts. Is that a fair - - I just trying to understand what you were thinking.

A. Well, I just hadn't paid on them, and I forgot about them, I guess. It's been years and years.

Q. Some of the debts we talked about had been placed for collection as late as 2003 . . . ?

A. I think because I started making payments on them, it started activating again. Otherwise, they hadn't had any.

Q. So because you hadn't made any payments on any of these debts, you just considered them not a part of your credit?

A. I didn't - - like I hadn't paid for them in years, and I didn't - - I knew they had to be there, but I hadn't paid on them, and I didn't consider them as my current status.

Q. So even though you knew you had them, because you hadn't paid on them, you didn't consider them current debts that you had.

A. Right

R. 52-53. After considering all the record evidence, I find that she was sincere and truthful about her intent, and her answer on question 22b of her SF 85P was an honest mistake, rather than a deliberate lie.

### POLICIES

Applicant is assigned to an ADP I, II or III position. ADP I and II positions are sensitive positions. Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. 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 ADP I, II and III cases.

In an evaluation of an applicant's trustworthiness suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (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 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. Guidelines ¶ 2. An administrative judge's over-arching 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. Guidelines ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guidelines ¶ 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) 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."

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 "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." Guidelines ¶ 2(b); Regulation ¶ C2.1.2. 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>(7)</sup> 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).<sup>(8)</sup>

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. 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. Executive Order 10865, § 7.

## 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)**

Guidelines ¶ 18 articulates the Government's concern concerning financial problems. "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."

Two disqualifying conditions could raise a trustworthiness concern and may be disqualifying in this case: "inability or unwillingness to satisfy debts," and "a history of not meeting financial obligations." Guidelines ¶ 19(a) and (c). Applicant admitted she was responsible for the five debts in SOR ¶¶ 1.c, 1.g, 1.l, 1.n, and 1.p, and most of these debts were delinquent for several years. In July and August 2006, she made 2 or 3 payments of \$50 on each account, but did not make any payments after September 1, 2006. By the time of her hearing, she had gone five months without making progress on these five accounts. The Government produced substantial evidence of these two FC DCs, 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.<sup>(9)</sup>

Five mitigating conditions under Guidelines ¶ 20(a)-(e) are potentially applicable:

- (a) 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;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The Guidelines do 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>(10)</sup> I conclude Guidelines ¶ 20(a) does not apply because Applicant had multiple (five) delinquent SOR debts at the time of her hearing, and she is not making payments on the debts in SOR ¶¶ 1.c, 1.g, 1.l, 1.n, and 1.p. Thus, there is an insufficient track record for concluding that financial

problems are unlikely to recur.

Applicant disclosed some information to support application of Guidelines ¶ 20(b). She was unemployed for six months before starting her current employment with a government contractor. 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 became employed by her current employer in 2004 to warrant full application of Guidelines ¶ 20(b). From September 1, 2006, to January 30, 2007 (the date the record was closed), Applicant has not paid any of her SOR creditors anything. <sup>(11)</sup>

She receives partial credit under Guidelines ¶ 20(c) because there is sufficient evidence that she has received some informal financial or credit counseling from her brother. However, there is insufficient evidence that her financial problems are being resolved or are under control.

Guidelines ¶ 20(d) does not apply because there is insufficient information to establish that Applicant showed good faith in the resolution of her debts. <sup>(12)</sup> She does, however, receive some credit in the whole person analysis, *infra*, for the application of the 4-year Texas statute of limitations, which applies to ten of her SOR debts. <sup>(13)</sup> See Tex. Civ. Prac. & Rem. Code §§ 16.004(c) and 16.051 (statute of limitations for contracts); 16.004(a)(3) (statute of limitations for debts); *Cont'l Cas. Co. v. Dr. Pepper Bottling Co. of Tex.*, 416 F.Supp. 2d 497, 505-507 (W.D. Tex. 2006); *Facility Ins. Corp. v. Employers Ins. of Wausau*, 357 F.3d 508, 513-514 (5<sup>th</sup> Cir. 2004) (discussing statute of limitations for open or revolving accounts). Creditor collection of the debts in SOR ¶¶ 1.c, 1.g, 1.l, and 1.n appeared to be legally barred by the Texas statute of limitations, however, she made payments on these debts in July and August 2006, potentially reinstating these debts and ending the statute of limitations' defense to collection. See *Stine v. Stewart*, 80 S.W.3d 586, 591, 45 Tex. Sup.J. 966 (Tex. 2002).

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 record evidence does not establish that she has taken timely actions to resolve her financial jeopardy over the last several years. Moreover, she has not provided sufficient information about how she attempted to resolve or repay her SOR debts. In sum, she has not demonstrated sufficient effort to resolve financial concerns because over the last 5 months she has not made any payments on the debts in SOR ¶¶ 1.c, 1.g, 1.l, 1.n, and 1.p.

Guidelines ¶ 20(e) is not applicable. She did not provide "documented proof to substantiate the basis of the dispute or [provide] evidence of actions to resolve the issue."

#### [Guideline E \(Personal Conduct\)](#)

Under Guidelines ¶ 15, "[c]onduct involving . . . lack of candor [or] dishonesty . . . 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 . . . ." One personal conduct disqualifying conditions is particularly relevant and may be disqualifying in this case. Guidelines ¶ 16(a) provides, "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."

Applicant gave an incorrect answer to question 22b of her 2004 SF 85P. The evidence of record, however, does not establish deliberate falsification. Although she admitted preparing her SF 85P, and answering incorrectly, she did not fully understand what information the question was designed to obtain.<sup>(14)</sup>

Her statements show confusion about which debts were supposed to be disclosed. At the time she completed her SF 85P, she thought that the answers she provided were correct. A trustworthiness concern based on Guideline E may be mitigated by substantial evidence of personal conduct mitigating conditions. Guidelines ¶ 17(f) provides "the information was unsubstantiated." The allegation in SOR ¶ 2.a is not established by substantial evidence because her erroneous statement does not constitute a deliberate falsification.

### **"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 Guidelines ¶ 2(a). As noted above, Applicant's failure to make progress resolving five of her SOR debts is a serious, ongoing, long-term problem and is sufficiently serious to be a trustworthiness concern. Her actions were knowledgeable and voluntary. Five of her SOR debts are currently unpaid, are not in a payment plan and are not otherwise resolved. She is 47 years old, sufficiently mature to be fully responsible for her conduct. The motivation for her failure to pay her debts was caused by low income as well as poor financial choices. 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. 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.

Applicant has presented substantial extenuating and mitigating evidence. Her financial problems were aggravated by her unemployment, especially in 2004. She was unemployed through no fault of her own. 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 reduced her potential vulnerability to improper financial inducements. The degree that she is "financially overextended," is also greatly reduced. She received some financial counseling and budgeting assistance from her brother. The absence of evidence of any prior violation of her employer's rules or requirements, her forthright and candid statement at her hearing, her solid performance as an employee and her evident sincerity about making future financial progress all weigh in her favor. Her lack of financial sophistication was illustrated in her confused statement at her hearing about completion of her SF 85P, as well as her conflicting descriptions of her responsibility for various debts and her attempts to resolve her debts. The adverse information about some debts in her credit report is not sufficient to outweigh her statement denying knowledge of 12 SOR debts. I conclude after careful consideration of all the evidence that the SOR debts in ¶¶ 1.a to 1.b, 1.d to 1.f, 1.h to 1.k, 1.m, 1.o, and 1.q are not substantiated.

There is, however, a paucity of supporting evidence of actions taken to establish her financial rehabilitation over the five months preceding her hearing. She acknowledged the validity of the debts in SOR ¶¶ 1.c, 1.g, 1.i, 1.n, and 1.p, and I conclude that these five delinquent debts are substantiated. 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 trustworthiness concerns pertaining to financial considerations, but she has mitigated concerns about her personal conduct. The evidence leaves me with grave questions and doubts as to Applicant's trustworthiness 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"<sup>(15)</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. 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

Subparagraphs 1.a to 1.b: For Applicant

Subparagraph 1.c: Against Applicant

Subparagraphs 1.d to 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraphs 1.h to 1.k: For Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: For Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: For Applicant

Subparagraph 1.p: Against Applicant

Subparagraph 1.q: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: 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 eligibility for a public trust position for Applicant. Clearance is denied.

Mark W. Harvey

Administrative Judge

1. Exhibit (Ex.) 1 (Questionnaire for Public Trust Positions (SF) 85P) is dated September 15, 2004, on pages 8-10). Applicant's certification signature appears on page 8. There is an allegation of falsification of this SF 85P in SOR ¶ 2.a.
2. Ex. 5 (Statement of Reasons (SOR), dated October 4, 2006). Exhibit 5 is the source for the facts in the remainder of this paragraph.
3. On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, in which the SOR was issued on or after September 1, 2006.
4. Ex. 6 (Applicant's response to SOR was notarized on October 18, 2006, and received at DOHA on October 23, 2006) is the source for the facts in this paragraph and the next paragraph.
5. Ex. 1, *supra* n. 1, provides Applicant's date of birth, education, marital status, relatives, and military service information at questions 1, 10, 14, 15 and 16, respectively.
6. The Security Clearance Application Standard Form (SF) 86 (September 1995 version) was not used in this case because the issue is Trustworthiness or Public Trust, rather than a security clearance. It is noteworthy that the SF 86 has



two Questions concerning debts: Question 38. "**Your Financial Delinquencies - 180 days** In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and Question 39. "**Your Financial Delinquencies - 90 days** Are you currently over 90 days delinquent on any debt(s)?" By asking the question two different ways, and seeking two different types of information, there is less of an opportunity for mistakes. SF 86 Question 39 apparently seeks information that is not included in Question 38. In any event, the use of the 7-year qualifier in Question 38 versus the "current" qualifier in Question 39 is relevant because Applicant apparently applied a "current" qualifier to her answer to Question 22b.

7. "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).

8. "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).

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

10. *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.

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

12. 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.).

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 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)).

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