

DATE: January 9, 2007

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-14117

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 nine alleged delinquent debts listed in the statement of reasons (SOR) totaling about \$11,000. One debt was a duplication, and two debts were not established. The six remaining delinquent debts totaled \$9,539. Her financial situation was aggravated by her daughter's medical problems and incarceration of her daughter's father. She is making slow but continuous progress in the resolution of her debts. Moreover all of her debts are beyond the 3-year South Carolina statute of limitations. She incorrectly answered one question on her Questionnaire for Public Trust Positions, but this false response was not deliberate, as there was no intent to deceive. Security concerns pertaining to personal conduct are not substantiated. She has mitigated security 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 16, 2004, Applicant applied for a public trust position and submitted a Questionnaire for Public Trust Positions, Standard Form (SF) 85P. ⁽¹⁾ On August 24, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a SOR to her, pursuant to the Directive and the Regulation. ⁽²⁾ The SOR alleges security concerns under

Guidelines F (Financial Considerations) and E (Personal Conduct) and details reasons why DOHA recommends that Applicant's case be submitted to an administrative judge for a determination that she is not eligible for occupying an ADP I/II/III position.

In a notarized answer, received at DOHA on September 19, 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 30, 2006. DOHA received the transcript of the hearing on December 13, 2006, and I received it on December 14, 2006.

FINDINGS OF FACT

As to the factual allegations under Guideline F, Applicant admitted that she was responsible for the nine debts alleged in the SOR, and under Guideline E, she denied the falsification allegation without elaboration.⁽⁴⁾ 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. 6).⁽⁵⁾ Since December 2002, she has been employed by a United States government contractor and is involved with processing sensitive medical records.⁽⁶⁾ From June to December 2002, she worked for a paint store, and from June 1996 to March 2002 she worked for a cinema. She has no military service.⁽⁷⁾ She attended a technical college from 1998 to 2002.⁽⁸⁾ She was never married.⁽⁹⁾ She has two children (a daughter born in 1998, and a son born recently).⁽¹⁰⁾

The SOR lists four debts charged off or placed for collection in 1999 and 2000: ¶ 1.a (\$206), ¶ 1.b (\$1,402), ¶ 1.c (\$1,206), and ¶ 1.d (\$444). These four debts total \$3,258.

SOR ¶ 1.e alleges a debt of \$1,229 was charged off in 2001. I conclude this debt was not substantiated for the reasons stated below. In 2003, the debt listed in SOR ¶ 1.f (\$166) was placed for collection. From May to October 2004, the three debts listed in SOR ¶¶ 1.g (\$208), 1.h (\$5,887), and 1.i (\$186) were charged off or placed for collection. These last three debts total \$6,281.

Applicant accepted responsibility for her SOR debts (R. 28-30). She was not aware of the specifics of some of the sources of the SOR debts, and she has not made any payments on the SOR debts (R. 28-31). She remembered having a cable television bill (SOR ¶ 1.i - \$ 186), and a department store bill (SOR ¶ 1.g - \$208) that she had not paid (R. 32-33). She bought a computer in 2000 for about \$900 (R. 35-36). She tried to return it, but they would not accept it (R. 43). She made some payments, but gradually fell further behind (R. 35-36). She asked the creditor to accept payments of \$50 per month, but the creditor insisted on larger payments, which she could not make. *Id.* Eventually, the interest and penalties increased the debt to the SOR ¶ 1.h amount of \$5,887 (R. 36, 44). The debt for the computer amounted to over half of the total delinquent debt alleged in the SOR.

On October 4, 2005, Applicant was interviewed by an investigator from the Office of Personnel Management.⁽¹¹⁾ She denied that she knew anything about the debts in SOR ¶¶ 1.a (\$206) and 1.e (\$1,229) (Exhibit G, at 1). At her hearing she reiterated her lack of knowledge of these two debts (R. 28, 31-32, 43). I conclude her responsibility for the debts in SOR ¶¶ 1.a and 1.e was not substantiated.⁽¹²⁾

The debts in SOR ¶ 1.f (\$166) and SOR ¶ 1.i (\$186) are duplications of each other. They list the same creditor, and same member number. Because of the duplication, I find the debt in SOR ¶ 1.f (\$166) to be unsubstantiated.

Applicant initially fell behind financially when her daughter was born profoundly deaf (R. 27). Her daughter had cochlear implants in December 2000 (R. 31). Until 2003, Applicant had to drive significant distances for her daughter's medical treatment and speech therapy (R. 27, 33, 49). She was also attending school full time until 2002 (R. 27). Her daughter's father has been incarcerated since 2002, and he was unable to pay child support for their daughter (R. 27, 34). She received money from Supplemental Security Income (SSI), however if her salary increased, her SSI payments declined (R. 34). At one point her sister, who was unemployed moved in with her (R. 36). At the time of the hearing,

Applicant's unemployed sister no longer lived in her residence.

Applicant began working with a debt counseling company (DCC) in December 2005 (R. 22).⁽¹³⁾ She meets with her DCC counselor on a weekly or bi-weekly basis (R. 22). DCC has provided budget counseling, and credit repair information (R. 23-24). She has learned how to balance her checkbook and set up a budget (R. 26). She pays \$25 for "credit repair" and \$25 for portfolio savings (R. 25, 49-50). She has made about 24 payments (R. 37, 60-61). She was not aware of how much of her payments DCC retained as a service fee (R. 38). At the end of her program DCC will return part of Applicant's money (R. 26, 49-50). She is supposed to contact her creditors, and arrange payments (R. 26, 49-50). She contacted some creditors and told them she would pay them when she receives her tax refund (R. 37). She is paying all her current bills on time (Exhibit A).

On October 5, 2005, Applicant provided a personal financial statement (PFS) to the security investigator.⁽¹⁴⁾ In 2005, her gross salary was \$1,539 per month. She received \$95 per month in child support,⁽¹⁵⁾ and had \$300 in deductions. Her net monthly income is \$1334. Her expenses totaled \$847 per month. Her expenses include rent (\$200), groceries (\$150), clothing (\$50), insurance (\$40), car expenses (\$257) and miscellaneous (\$150). She has a car payment of \$346, a personal loan payment of \$59 and a credit card payment of \$18. Her net remainder is \$64. The 2005 PFS did not include any of the debts that were listed on the SOR. The PSF did not list any assets.

Applicant has about \$2,000 in a 401(k) plan (R. 40). At her hearing, she said her net monthly income is \$1,180 per month.⁽¹⁶⁾ She also received SSI monthly payments of \$289 (R. 42). Her car payment and the personal loan described in her 2005 PFS are paid in full (R. 56).

Personal Conduct

Question 22b 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." Applicant answered, "No." SOR ¶ 2.a alleges that this answer is false.

Her 2005 statement to an OPM investigator did not mention the falsification issue.⁽¹⁷⁾

In her statement at her hearing, she explained that she misunderstood Question 22b's requirements stating:

I misunderstood the question, because it asked -I mean, I had the 180 days delinquent, and then it said include loans or obligations funded or guaranteed by the Federal government. I just got confused on the question because I wasn't sure what it was asking, so I answered "no" to that.

(R. 39). In her closing comments she stated, "Well, I mean, I just assumed that it meant loans or anything from the government. I didn't know it was including my - my debts. So I just misunderstood the question." (R. 57).

I carefully observed Applicant's demeanor as she addressed the falsification of her SF 85P. I am convinced she answered "No" because she thought the government was seeking information about her delinquent government debts. She mentally limited the question to government delinquent debts. At her hearing she responded in a forthright, candid manner to the best of her ability. Moreover, her lack of understanding of how much DDC charges for a service fee, and her handling of the computer purchase are indications of her lack of sophistication about financial matters. After considering all the record evidence, I find that she was truthful about her intent, and her answer on Question 22b of her SF 85P was an honest mistake, rather than a deliberate lie.

Her friends, supervisors and co-workers attest that Applicant is trustworthy, hardworking, dedicated, honest, and reliable.⁽¹⁸⁾ She maintains a positive, professional attitude, and has a strong work ethic. *Id.* She is an valuable asset to her company. *Id.*

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 trustworthiness concern and may be disqualifying, as well as those which could mitigate trustworthiness 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." ⁽¹⁹⁾ The government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to the applicant to produce evidence and prove a mitigating condition. 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. Regulation, Appendix 8, 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." FC DCs 1 and 3 apply to her six failures to meet her financial obligations, and her admission that she was unable or unwilling to pay her debts. The six SOR debts remained delinquent for several years, and continued to be delinquent at the time of her hearing. 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. ⁽²⁰⁾

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, ⁽²¹⁾ I conclude FC Cs 1 and 2 do not apply because Applicant had multiple (six) delinquent SOR debts that were not paid, settled or otherwise resolved at the time of her hearing.

FC MCs 3 and 4 partially apply to all six SOR debts at issue because the debts became delinquent several years ago and were the result of the incarceration of her daughter's father as well as their daughter's medical problems. These changes in family circumstances are good examples 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 is still unable or unwilling to pay all of her debts. There is a paucity of evidence showing how she endeavored to pay or resolve her six delinquent SOR debts over the last three of four years. Based on the sincerity of her testimony, and the other record indicia of improved financial self-discipline, I have some confidence that she is on the right track now towards correction of her financial problems. She also receives partial credit under FC MC 4 because there is sufficient evidence that she received financial counseling, however, she was unable to fully apply the financial counseling to resolve her six delinquent SOR debts due to lack of financial resources. She is slowly saving money through DCC and will eventually be able to repay her creditors. She has not accrued any new delinquent debt in the last three years. Accordingly, I will apply some credit for FC MCs 3 and 4 under the whole person analysis, *infra*.

FC MC 6 does not apply because there is insufficient information to establish that Applicant showed good faith in the resolution of her debts. ⁽²²⁾ 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 unpaid SOR debts. *See* S.C.

⁽²³⁾

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[le]d 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).

Elimination of her delinquent debt load through the statute of limitations has ended her potential vulnerability to improper financial inducements because she is no longer "financially overextended," but it does not negate her past conduct which failed to resolve the financial jeopardy resulting from the failure of the father of her daughter to provide financial support, and the costs arising from his daughter's medical problems. Moreover, she has not provided sufficient information about how she attempted to resolve or repay her six SOR debts beyond working with DCC to save money and making general plans to repay her creditors.

Personal Conduct

Under Guideline E, "conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that a person may not properly safeguard classified information." Regulation, Appendix 8 at 142.

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 . . . used to . . . determine security clearance eligibility or trustworthiness." *Id.* A security concern may result under PC DC 3 when an applicant deliberately provides "false or misleading information concerning relevant and material matters to a . . . security official . . . or other official representative in connection with a personnel security or trustworthiness determination." *Id.*

For PC DCs 2 and 3, Applicant gave a false answer to Questions 22b of her 2004 SF 85P. ⁽²⁴⁾ The evidence of record, however, does not establish falsification of Question 22b by substantial evidence. Although she admitted preparing her trustworthiness questionnaire, and answering incorrectly, she did not fully understand the question. ⁽²⁵⁾

At the time she completed the SF 85P, she thought that the answer she provided was correct. Her statements show confusion about which debts were supposed to be disclosed.

A security concern based on Guideline E may be mitigated by 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." *Id.* at 143. The allegations in SOR ¶ 2.a are not established by substantial evidence. The erroneous answer was a mistake, and was not made with intent to deceive. In sum, I am satisfied that Applicant's erroneous answer to Question 22b of her SF 85P was a mistake caused by her misunderstanding of the question. She honestly believed that the correct answer was "No," at the time she provided it.

"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 27 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

resulted from voluntary choices to purchase items or to obtain services. However, her inability to repay her debts resulted from incarceration of her daughter's father, and her daughter's medical problems. Applicant has \$2,000 in her 401(k) plan. Since October 2005, she paid off her car loan and a personal loan. There is some evidence of rehabilitation, positive behavior changes, receipt of financial counseling in 2006, reduction of overall debt and improved circumstances as indicated by self-discipline and the complete absence of new delinquent debt over the last two years. The potential for pressure, coercion, exploitation, or duress is low. Applicant is current on her recent debts, and her very positive employment history since 2002 supports a determination of trustworthiness. Changes resulting from counseling and greater awareness of financial responsibilities will result in a continuously improving trend of improved financial circumstances.

In sum, the likelihood of new debt problems is low. Applicant's financial case shows her willingness to use DCC to resolve her delinquent debts (R. 26), even though she is not legally required to pay them because of the South Carolina 3-year statute of limitations. However, six SOR debts remain unpaid, and not resolved (except by applying the statute of limitations). 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, and the personal conduct concerns are not substantiated.

The evidence clearly supports Applicant's trustworthiness eligibility and suitability. I take this position based on the law, my "careful consideration of the whole person factors"⁽²⁶⁾ 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 1i: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a: 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 16, 2004, on the last page. There is a falsification allegation regarding Question 22b of the SF 85P.
2. Exhibit 5 (Statement of Reasons (SOR), dated August 24, 2006) is the source for all the factual assertions in the remainder of this paragraph.
3. Exhibit 6 (Applicant's response to SOR is date stamped as received at DOHA on September 19, 2006).
4. The source for all factual assertions in this paragraph is Exhibit 6, *supra* n. 3.
5. Exhibit 1, *supra* n. 1, at 1 (date of birth)

6. *Id.*, at 3 (stating she has been employed with the same government contractor since 2002).
7. Exhibit 1, *supra* n. 1, question 16, at 6 (military service).
8. *Id.*, question 10, at 2 (where you went to school).
9. *Id.*, question 14, at 5 (marriage).
10. *Id.*, question 15, at 5 (your relatives); R. 49.
11. Exhibit G (Applicant's statement to special investigator for the Office of Personnel Management Investigations Service (OPM IS) on October 4, 2005) at 1-2. The remainder of this paragraph is derived from Applicant's OPM IS statement.
12. On several occasions she said she was responsible for the SOR debts. When these two debts were specifically and individually addressed, she indicated she was not aware of their origin.
13. DCC documentation is at Exhibit 2, at 10-14 and Exhibit A.
14. Exhibit G, Personal Financial Statement (PFS), dated October 4, 2005. The remainder of this paragraph is derived from Applicant's PSF.
15. Court ordered child support was \$47 per week, but she said she only received about \$95 per month. *Id.* At her hearing she said he failed to provide financial support (R. 34). In any event due to his incarceration, child support payments for her are unlikely.
16. She indicated that her net bi-weekly pay was \$590, but her monthly net pay was \$1,090 (R. 40-41). I will assume she made a math error.
17. Exhibit G, *supra* n. 11, at 1-2.
18. One character witness made a statement at her hearing, and four written character statements were admitted. R. 48-51; Exhibits B to E. Performance appraisals dated January 26, 2006; February 14, 2005; and January 12, 2004 were also admitted. Exhibit F.
19. "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).
20. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).
21. *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.
22. 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.).

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

24. Applicant's statements about her intent and state of mind when she executed her SF 86 are relevant but not binding information. Moreover, her statements are considered in light of the record evidence of a whole. ISCR Case No. 04-08934 at 2 (App. Bd. Aug. 17, 2006). I specifically do not give any weight to her subsequent disclosures concerning her debts. "The security concerns raised by Applicant's falsification were not necessarily overcome by Applicant's subsequent disclosures to the government." *Id.* (citing ISCR Case No. 01-19513 at 5 (App. Bd. Jan. 22, 2004)).

25. 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)).

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