



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 07-05134
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro Se*

August 11, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guidelines F (Financial Considerations), E (Personal Conduct), and J (Criminal Conduct). Clearance is denied.

Statement of the Case

On April 8, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On October 9, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.¹ The SOR alleges security

¹On Aug. 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

concerns under Guidelines F (Financial Considerations), E (Personal Conduct), and J (Criminal Conduct). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On December 21, 2007, Applicant responded to the SOR allegations, and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated March 6, 2008, was provided to her, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.² Applicant did not submit any information within the 30-day time period after receiving a copy of the FORM. The case was originally assigned to another administrative judge on June 16, 2008, and due to case load considerations was reassigned to me on July 18, 2008.

Findings of Fact

Applicant denied the SOR allegations contained in ¶¶ 1.a., 2.a. and 2.b., and neither admitted or denied 3.a.³ She admitted the remaining SOR allegations. Her admissions are incorporated herein as findings of fact. I make the following additional findings of fact:

Applicant is a 44-year-old Counselor and Director of Student Services, who has worked for her government contractor employer since July 2005. She has also been employed as Chief Executive Officer and President of another company since April 2004.⁴ She holds a Certificate in Advanced Graduate Studies awarded in May 2001, and has completed course work for a Ph.D. in Education, but has not completed her thesis. Applicant was married in June 1987 and that marriage ended by divorce in February 1993. She has an 18-year-old daughter from that marriage.⁵

(Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

² DOHA transmittal letter is dated Mar. 6, 2008; and Applicant received the FORM on March 14. The DOHA transmittal letter informed Applicant that she had 30 days after Applicant's receipt to submit information.

³ Although Applicant did not admit or deny this allegation in her Answer, she did provide an explanation stating in part, "my indebtedness has justification in mitigating circumstances" in her Answer, Item 2.

⁴ Items 3 and 4.

⁵ Item 4.

Applicant's background investigation addressed her financial situation and included the review of her e-QIP,⁶ her April 2006 credit bureau report,⁷ her April 2007 credit bureau report,⁸ her February 2008 credit bureau report,⁹ and her September 2007 Responses to Interrogatories.¹⁰ The government established by Applicant's admissions and evidence presented that Applicant had or has 27 delinquent debts totaling \$116,521 (SOR ¶¶ 1.a. – 1.aa.) Of those debts, 12 are defaulted student loans. (SOR ¶¶ 1.b. – 1.m.) Per the April 2007 credit bureau report, a charged off department store credit account in the amount of \$5,466 has been settled and shows a zero balance.¹¹ (SOR ¶ 1.t.) The majority of these debts became delinquent in 2005 – 2006 timeframe.

Applicant offered no documentation that any of her debts have been paid, that she has set up payment plans, nor has she submitted any evidence that she contacted any creditors or sought credit counseling or that her debts are or will be resolved. In her Responses to Interrogatories, Applicant submitted evidence that she was unemployed from June 2002 to December 2003 following her voluntary termination as Dean of Student Life at a preparatory school, her past underemployment, and that she is caring for her very ill mother.¹²

She also submitted a letter from a physician describing her mother's illness, which includes metastatic cancer, sleep apnea, and congestive heart failure. The physician also stated that in addition to Applicant caring for her mother, she is/or will be caring for two aunts. One aunt has suffered a stroke and has Paget's disease and hypertension and is unable to drive. A second aunt has rheumatoid arthritis and is wheel chair bound. The second aunt's husband is scheduled to have heart surgery.¹³

Applicant's documentation does not mention when and to what extent Applicant is or has been providing care for her family members. Applicant's Answer states that at

⁶ Item 3.

⁷ Item 7.

⁸ Item 6.

⁹ Item 5.

¹⁰ Item 4 (contains Office of Personnel Management (OPM) unsworn declaration conducted on August 10, 2006, which was ratified as true and correct by Applicant on September 18, 2007.)

¹¹ Item 6.

¹² *Id.*

¹³ Item 2.

least as of December 2007, as a result of her providing care for these family members, she is unable to work.¹⁴

In her April 2006 e-QIP, Applicant answered “No” to Sections 28(a) and 28(b) (asking whether in the last seven years she had been 180 days delinquent on any debts, and whether she was currently delinquent on any debts, respectively.) She explained in her August 2006 OPM Interview that her failure to answer the form correctly was due to an “oversight.”¹⁵ Applicant’s December 2006 Answer stated, “When I started the process of getting a security clearance in the summer of 2004, my financial delinquencies were not 120 or 90 days behind. By the time my information got processed I was behind due to my inability to work.”¹⁶ The record evidence reflects that the debts alleged in ¶¶ 1.a., 1.n., 1.o., and 1.p. were all at least 180 days delinquent within seven years of April 2006. In addition, the record evidence reflects the debts alleged in ¶ 1.b. through 1.p. were all at least 90 days delinquent when Applicant completed her e-QIP.

Policies

When evaluating an Applicant’s suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor 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.

¹⁴ *Id.*

¹⁵ Item 4.

¹⁶ Item 2.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”¹⁷ demonstrating, 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 “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.” Directive ¶ E3.1.15. 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).¹⁸

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Guideline F, Financial Considerations

Under Guideline F (Financial Considerations),¹⁹ the government’s concern is:

¹⁷ See Directive ¶ E3.1.14. “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).

¹⁸ “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).

¹⁹ Guideline ¶ 18.

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.

Applicant admitted the majority of the 27 debts alleged under this Guideline (SOR ¶¶ 1.b. – 1.aa.). She denied one debt (SOR ¶ 1a.). She did not submit any documentation supporting denial of this debt. As noted *supra*, the debt alleged in SOR ¶ 1.t. is resolved. Her admissions and evidence submitted by the government substantiate the remaining debts. In the absence of credible evidence, I am unable to glean any further information, favorable or unfavorable, with regard to identified financial concerns.

¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Of the Financial Considerations Disqualifying Conditions listed *supra*, two are applicable: ¶ 19(a): "inability or unwillingness to satisfy debts;" and 19(c): "a history of not meeting financial obligations." The government substantiated 26 of the 27 debts alleged, and those remaining debts exceed \$100,000. The majority of those debts became delinquent in the 2005-2006 timeframe. Applicant did not submit a payment plan, a budget, nor did she show that she has the ability to begin making payments on any of these debts.

¶ 20. Conditions that could mitigate security concerns include:

(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; and

(f) the affluence resulted from a legal source of income.

Guideline ¶ 20(a) does not provide a temporal or specific definition of what constitutes "recent" conduct. Applicant has 26 delinquent debts, which remained unpaid and not in a payment plan at the time of her hearing. Moreover, she has not shown sufficient effort and/or unusual circumstances to establish her financial problems are "unlikely to recur." Her overall conduct with her creditors casts doubt on her current reliability,

trustworthiness, and good judgment. Based on my evaluation of the record evidence as a whole,²⁰ I conclude Guideline ¶ 20(a) does not apply.

Applicant disclosed sufficient information to support partial application of Guideline ¶ 20(b). She was unemployed for a portion of the time these debts were accrued and became delinquent, and has been a caregiver for her family members. The record did not disclose any information indicating her actions were in bad faith. However, Applicant's conduct does not warrant full application of Guideline ¶ 20(b) because she did not act more aggressively and responsibly to resolve her delinquent debts.²¹ She has not maintained communication with her creditors or made any payments on 26 debts.

Applicant does not receive credit under Guideline ¶ 20(c) because she did not receive financial or credit counseling, and she has no payment plans with her creditors. There is no record evidence of "clear indications that the problem is being resolved or is under control."

Guideline ¶ 20(d) does not fully apply because there is insufficient information to establish that Applicant showed good faith in the resolution of her debts.²² Guideline ¶ 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" with respect to her three delinquent debts. In sum, she has not demonstrated sufficient effort to resolve financial concerns to merit full application of any mitigating conditions under the adjudicative guidelines.

²⁰See 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 all debts are considered as a whole.

²¹"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)).

²²The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

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

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

Considering the record evidence as a whole,²³ I conclude none of the six Financial Considerations Mitigating Conditions (FC MC) are applicable. Based on the available evidence, her financial problems are likely to be a concern in the future. Moreover, her financial problems are recent, not isolated, and ongoing.

Guideline E (Personal Conduct)

Under Guideline E (Personal Conduct),²⁴ the government's concern is as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

As noted, Applicant's explanation for failing to disclose truthful responses to questions 28(a), and 28(b) is not credible. Considering the record as a whole, I am convinced Applicant deliberately failed to disclose the information. Numerous factors weighed in my analysis to reach that conclusion, including: Applicant's age, her level of education, her employment history, the number and value of the debts, her long term disregard of the debts, and the lack of credibility of her excuses. She knew the importance of accurate completion of her security clearance application, and nevertheless failed to provide information that was material to making an informed security decision.

¶ 16. Conditions that could raise a security concern and may be disqualifying include:

(a) 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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single

²³ 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.

²⁴ Guideline 18.

guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations;

(4) evidence of significant misuse of Government or other employer's time or resources;

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) association with persons involved in criminal activity.

Of the Personal Conduct Disqualification Conditions listed *supra*, two are applicable ¶ 16(a) "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . .", and ¶ 16(e): "personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress"

¶ 17. Conditions that could mitigate security concerns include:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

I specifically considered all Guideline E Mitigating Conditions and conclude that none apply. Applicant's falsification is recent, and her favorable information is not sufficient to apply any of the MCs.

Guideline J (Criminal Conduct)

Under Guideline E (Personal Conduct),²⁵ the government's concern is as follows:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

²⁵ Guideline ¶ 30.

The government established its case under Guideline J by showing that Applicant was involved in this offense in 2006. I find, as discussed above under Guideline E, that Applicant deliberately falsified her 2006 e-QIP. Her falsification of the security clearance application is material and a violation of 18 U.S.C. § 1001, a felony.²⁶

¶ 31. Conditions that could raise a security concern and may be disqualifying include:

- (a) a single serious crime or multiple lesser offenses;
- (b) discharge or dismissal from the Armed Forces under dishonorable conditions;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;
- (d) individual is currently on parole or probation;
- e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program; and
- (f) conviction in a Federal or State court, including a court-martial of a crime, sentenced to imprisonment for a term exceeding one year and incarcerated as a result of that sentence for not less than a year.

Of the Criminal Conduct Disqualifying Conditions listed *supra*, two are applicable: ¶ 31(a): “a single serious crime or multiple lesser offenses;” and ¶ 31(c) “allegation or admission of criminal conduct regardless of whether the person was formally charged, formally prosecuted or convicted.”

Applicant’s recent falsification brings to the forefront the criminal conduct concerns raised by her past behavior. I am required to consider Applicant’s overall questionable behavior when evaluating the seriousness of the conduct alleged in the SOR to determine factors such as the extent to which her behavior is recent; the likelihood of recurrence; Applicant’s explanations concerning the circumstances of the incidents alleged; and her rehabilitation.²⁷

²⁶ It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation, or knowingly make or use a false writing in any matter within the jurisdiction of the executive branch of the Government of the United States. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. Egan, 484 U.S. at 527 (discussing 18 U.S.C. § 1001.)

²⁷ ISCR Case No. 04-09959 at 3 (App. Bd. May 19, 2006).

¶ 32. Conditions that could mitigate security concerns include:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense;
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement; and
- (e) potentially disqualifying conditions (b) and (f) above, may not be mitigated unless, where meritorious circumstances exist, the Secretaries of the Military Departments or designee; or the Directors of Washington Headquarters Services (WHS), Defense Intelligence Agency (DIA), National Security Agency (NSA), Defense Office of Hearings and Appeals (DOHA) or designee, has granted a waiver.

Under the totality of the circumstances, I find Applicant's criminal behavior is recent and not isolated. Considering her criminal behavior, the nature and seriousness of her misconduct, her falsification of the e-QIP, and her disregard for her financial obligations, I find her favorable information is not sufficient to mitigate Guideline J security concerns. Her behavior raises questions about her ability and willingness to follow the law, and ultimately, to protect classified information. Her recent falsification and lack of candor weigh against a finding of rehabilitation and positive behavioral changes. I find that none of the mitigating conditions apply.

Additionally, for the same reasons outlined under the discussions of Guidelines F, E and J, incorporated herein, I conclude Applicant's behavior shows questionable judgment, lack of reliability, and untrustworthiness.

To conclude, Applicant presented little or no evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole person concept was given due consideration and that analysis does not support a favorable decision.

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"²⁸ and

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

supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated 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. – 1.t.:	Against Applicant
Subparagraph 1.t.:	For Applicant
Subparagraphs 1.u. – 1.aa.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a. – 2.b.:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a.:	Against Applicant

Conclusion

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

ROBERT J. TUIDER
Administrative Judge