



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



In the matter of:)	
)	
(Redacted))	ISCR Case No. 07-06023
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

January 14, 2011

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines K (Handling Protected Information), E (Personal Conduct), and F (Financial Considerations). The Guideline K security concerns are mitigated, but the Guideline E and F concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 26, 2006. On February 9, 2009, the Defense Office of Hearings and Appeals (DOHA) sent her a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guidelines K, E, and F. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on February 12, 2009; answered it on March 6, 2009; and requested a hearing before an administrative judge. DOHA received the request on March 9, 2009. DOHA sent Applicant an amendment to the SOR on August 9, 2010, adding three allegations under Guideline E. Applicant answered the amendment to the SOR in an undated document.¹ Department Counsel was ready to proceed on August 12, 2010, and the case was assigned to me on August 17, 2010. DOHA issued a notice of hearing on September 9, 2010, scheduling it for September 28, 2010. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 10 were admitted in evidence without objection. Applicant testified, and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection.

During Department Counsel's cross-examination, Applicant indicated that she did not desire to continue with the hearing. I recessed the hearing to allow Applicant to decide whether she desired to withdraw her request for a hearing. (Tr. I at 81-83.²) The transcript of this portion of the hearing was received on October 4, 2010.

On October 14, 2010, Applicant informed Department Counsel that she desired to continue with the hearing, and that she intended to retain a lawyer. On October 28, 2010, DOHA issued a second notice of hearing, scheduling the hearing to continue on November 22, 2010. I reconvened the hearing as scheduled. Applicant appeared and stated that she had decided to continue representing herself. (Tr. II at 5.)

After Department Counsel completed her cross-examination, Applicant presented the testimony of one witness and submitted AX E through J, which were admitted without objection. I kept the record open until December 1, 2010, to enable Applicant to submit additional documentary evidence, and she timely submitted AX K, which was admitted without objection. Department Counsel's comments regarding AX K are attached to the record as Hearing Exhibit I. The transcript of the second day of the hearing was received on December 1, 2010.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 3.c, 3.f, 3.g, 3.h-3.m, and 3.o-3.t. She denied all the remaining allegations in the SOR and the amendment to the SOR. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 40-year-old employee of a federal contractor, currently working as a deployment coordinator. (Tr. I at 44.) She has worked for her current employer since

¹ The page numbering on the amendment to the SOR indicates that it consists of three pages, but only two pages were in the file. The copy in the file was Applicant's facsimile transmission of her answer, and her facsimile cover sheet indicates that only two pages were transmitted. The third page is included as the last page of GX 10.

² Separate transcripts were prepared for each day of the hearing. The transcript of the proceedings on September 28, 2010 is cited in this decision as Tr. I. The transcript of the proceedings on November 22, 2010 is cited as Tr. II.

July 2005. Her SCA reflects that she has held a security clearance since April 2002. (GX 1 at 8.) She testified she has held a security clearance since she was 18 years old. (Tr. I at 47.) She previously worked for other federal contractors from August 1997 to July 2005. She was a federal employee from 1988 to August 1997.

Applicant married in July 1993 and divorced in October 2000. She has a 16-year-old daughter who lives with the daughter's father. Applicant and her daughter's father have an informal agreement that Applicant will pay for their daughter's education.

In March 1999, while working for a previous employer, Applicant was appointed as the custodian for her employer's communications security (COMSEC) account. She completed the COMSEC Managers Course in 1999 and attended annual COMSEC Managers Seminars. In August or September 2004, her supervisor began shifting some of her responsibilities to others because he believed she was being overworked with too many duties. In April 2005, the account was audited in preparation for a change of custodians. The audit revealed that (1) COMSEC inventories for 2000, 2002, 2003, and 2004 were not completed and forwarded as required; (2) COMSEC keying material was reported as being destroyed but was still on hand; (3) COMSEC keying material was missing; (4) superseded COMSEC keying material was not destroyed as required; (5) COMSEC keying material was improperly stored; and (6) COMSEC devices were not properly safeguarded. (GX 5; GX 6.) The last finding included an incident where she stored classified COMSEC keying material in her desk drawer rather than a classified safe. As a result of these discrepancies, Applicant was suspended for one week without pay. These findings are alleged in SOR ¶ 1.a and were admitted by Applicant in her answer.

A report of investigation (ROI)³ by the security manager reflects that during the investigation Applicant was asked if she had sufficient time and resources to perform her duties, and she responded, "No, I was swamped with work and training new hires, but ultimately knew that I was responsible for maintaining the account." (GX 6 at 8.) The ROI also reflects that the new custodian and another employee conducted the change-of-custodian inventory without Applicant's participation due to "management interest" in completing the inventory quickly. (GX 6 at 5.) The applicable COMSEC Manual requires that a newly appointed custodian and the departing custodian conduct an inventory of all COMSEC material held by the account. The ROI does not reflect whether Applicant was invited or directed to participate in the inventory.

On April 25, 2008, Applicant submitted an affidavit to a security investigator from the Office of Personnel Management (OPM), in connection with her application to continue her clearance. She stated that her duties required a "general audit" of all COMSEC equipment every six months and an annual "full audit" to be submitted to the supervising federal agency. When she was scheduled for reassignment in late 2004 or

³ The ROI is not covered by the authentication requirements of Directive ¶ E3.1.20, because it was not a "DoD personnel background report of investigation" and was not "furnished by an investigative agency." The investigation was conducted by the federal contractor's employees regarding a suspected security violation. Applicant did not object to admission of the ROI.

early 2005, two audits that should have been completed over an approximate nine-month period (in 2003-04) had not been done, and the supervising federal agency had sent her notice that the required audits had not been received. When she received the notice of missing inventories, she notified the supervising agency of the impending change of custodians.

In Applicant's April 2008 affidavit, she stated that she intended to have her supervisor, who was the assistant custodian, assist with the required audits, but she conducted the audit alone because her supervisor was involved in personal matters that left insufficient time to participate in the audit. Applicant stated that she conducted the audit, discovered that some property was missing, and reported her discovery to her supervisor and her security manager. Applicant used the term "audit" instead of "inventory," but it is clear that she was talking about an inventory of COMSEC material. Applicant's affidavit does not state whether she conducted a "general" semi-annual audit, the annual "full" audit required by the supervising agency, or the required change-of-custodian inventory. (GX 4 at 1-2.)

The amended SOR ¶ 2.b alleges that Applicant falsified her affidavit by stating that she conducted the change-of-custodian inventory. Applicant denied this allegation in her answer to the Amended SOR. At the hearing, she testified that she could not explain the apparent discrepancy because it was so long ago, but she remembered specifically that she did her own inventory. (Tr. II at 44-45.)

The ROI also found that the required inventories were not completed and submitted in 2000, 2002, 2003, and 2004. The amended SOR ¶ 2.c alleges that Applicant falsified her affidavit of April 25, 2008, by stating that she had not completed the two inventories required in a nine-month period in 2004-05, but failing to disclose that the required inventories were not conducted in 2000, 2002, 2003, and 2004. Applicant denied this allegation in her answer to the Amended SOR.

Finally, the ROI quoted Applicant as stating, "The [supervising agency] did request an annual inventory every year and this was conducted through 2003 and the results were sent to the [supervising agency]." The report of investigation also states that an inventory dated May 19, 2003, was found in the supervising agency's records but it was not signed by Applicant or the assistant custodian. (GX 6 at 4, 8.) The amended SOR ¶ 2.d alleges that Applicant made false statements during the investigation when she stated that she completed the required inventories every year through 2003. Applicant denied this allegation in her answer to the amended SOR. At the hearing, she testified that she denied all three allegations of falsification because she could not remember the dates of the various inventories because of the passage of time. (Tr. II at 46.)

The SOR alleges 20 delinquent debts. The debts alleged in SOR ¶¶ 3.a-3.i and 3.t were incurred and became delinquent between 2001 and 2004. The remaining debts became delinquent on or before September 2007.

Applicant attributed her financial problems to her divorce in October 2000 that led to alcohol abuse and involvement in an abusive relationship. (GX 2 at 13.) She terminated the abusive relationship in August 2001. After a conviction for driving under the influence in May 2005 and completion of court-ordered counseling, she reduced her consumption to one or two beers once or twice a month. (GX 2 at 4-7; Tr. II at 50-51.)

The table below summarizes the evidence concerning the delinquent debts alleged in the SOR.

SOR	Debt	Amount	Answer	Status	Evidence
3.a	Judgment (rent)	\$4,022	Deny	Satisfied by wage garnishment; not on current credit report	GX 7 at 1; GX 8 at 1; Tr. I at 56-57
3.b	Credit card	\$1,830	Deny	Unpaid	GX 7 at 2; Tr. I at 61
3.c	Credit card	\$566	Admit	Unpaid	GX 9 at 8
3.d	Judgment (rent)	\$4,654	Deny	Unpaid	GX 9 at 4
3.e	Judgment (dental)	\$528	Deny	Satisfied, Nov. 04	GX 7 at 1
3.f	Judgment	\$1,811	Admit	Unpaid	GX 9 at 5; Tr. I at 62-63
3.g	Medical	\$104	Admit	Unpaid	GX 7 at 2
3.h	Medical	\$75	Admit	Unpaid	GX 7 at 2
3.i	Medical	\$400	Deny	Unpaid	GX 7 at 1
3.j	Medical	\$103	Admit	Unpaid	GX 7 at 2
3.k	Pizza (bad check)	\$69	Admit	Unpaid	GX 3 at 10
3.l	Medical	\$127	Admit	Unpaid	GX 9 at 13
3.m	Credit card	\$1,441	Admit	Unpaid	GX 3 at 9
3.n	Veterinary	\$251	Deny	Unpaid	GX 9 at 12
3.o	Pizza (bad check)	\$62	Admit	Unpaid	GX 3 at 10
3.p	Credit card	\$282	Admit	Unpaid	GX 8 at 1
3.q	Car repossession	\$12,291	Admit	Made payments totaling \$3,845	GX 7 at 2; AX K at 2
3.r	Credit card	\$468	Admit	Unpaid	GX 7 at 2
3.s	Car insurance	\$404	Admit	Unpaid	GX 9 at 11
3.t	Cell phone	\$1,784	Admit	Unpaid	GX 9 at 11

Applicant testified that in August 2008 she borrowed about \$13,000 from her parents in order to consolidate her debts. She has been repaying her parents monthly and still owes them about \$2,400. (Tr. I at 49-50.)

Applicant testified that the judgments alleged in SOR ¶¶ 3.d and 3.f were for the same debt. The two judgments were obtained by the same creditor, but the amounts are significantly different, and they were obtained on different dates, one in October 2003 and one in July 2004. Applicant did not present any documentation to support her testimony.

Applicant's father testified that he and Applicant's mother had helped her several times by loaning her money, but they always made it clear that it was a loan and they expected to be repaid. In addition, they required that she provide them with a financial analysis and a financial plan. (Tr. II at 16-18.) He testified that they loaned Applicant money about three times in the last ten years, usually in amounts around \$2,000 or \$3,000. Applicant has always made an effort to repay her parents, but they have not been strict in enforcing a payment schedule. (Tr. II at 22-26.) Applicant's father understands the relationship between a security clearance and financial stability, having held a security clearance for 20 years in the Navy and another ten years as a contractor. (Tr. II at 26.)

Applicant presented a written budget reflecting net monthly pay of \$4,060, fixed monthly expenses of \$3,860, and a remainder of \$320. Her budget includes monthly loan repayments of \$400 to her parents, \$100 monthly savings for her daughter, and monthly payments of \$250 on the debt alleged in SOR ¶ 3.q. It does not reflect payments on the delinquent debts alleged in SOR ¶¶ 3.b-3.d, 3.f-3.p, and 3.r-3.t. (AX J.)

Applicant's performance appraisals for 2007, 2008, and 2009 rated her in the top category. (AX A, B, and C.) Her supervisor for the past three years described her duties as requiring the ability to "multitask, exercise sound judgment, and make proper decisions routinely, without direct supervision." Her supervisor regards her as "completely trustworthy." She has "the utmost confidence in [Applicant's] loyalty, honesty, and capability." (AX E.)

Applicant's supervisor in her former job believes that she fully appreciated the seriousness of her mistakes that led to her disciplinary action, has expressed genuine regret for them, and has matured and learned from her experience. (AX F.) The director of security at the time of Applicant's security violations believes that she "was asked to assume several new roles which stretched her abilities as a security professional." He describes her as genuinely remorseful, and he recommends that her security clearance be continued. (AX G.)

A project manager for whom Applicant served as a facility security officer for six years found her performance to be outstanding. He states that her professionalism and integrity are beyond reproach. (AX H.)

A coworker for five years describes Applicant as exceptionally caring, devoted, and energetic. She also describes Applicant as a "wonderful humanitarian" who volunteers to work at military hospitals with wounded soldiers, where she demonstrates fearlessness and compassion in situations where others are not strong enough to deal with the soldiers' tragedies. (AX I.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to

“control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. 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). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline K, Handling Protected Information

The SOR alleges the numerous security violations that were found during the change-of-custodian inventory of Applicant's COMSEC account. The security concern under this guideline is set out in AG ¶ 33: "Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern." Applicant's admissions, corroborated by her former employer's ROI, establish two disqualifying conditions under this guideline: AG ¶ 34(b) ("collecting or storing classified or other protected information at home or in any other unauthorized location") and AG 34(g) ("any failure to comply with rules for the protection of classified or other sensitive information"). AG 34(h) ("negligence or lax security habits that persist despite counseling by management") is not established because there is no evidence that Applicant was counseled about her security habits.

Since the Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 34(b) and (g), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005)

Security violations are one of the strongest reasons for denying or revoking access to classified information. Once a security violation is established, an applicant has a heavy burden of demonstrating that he or she should be entrusted with classified information. Because security violations strike at the very heart of the industrial security program, an administrative judge must give any claims of reform and rehabilitation strict scrutiny. ISCR Case No. 03-02688 (App. Bd. Oct. 5, 2006).

Security concerns under this guideline may be mitigated if "so much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." AG ¶ 35(a). The first prong of this mitigating condition focuses on whether the conduct was recent. There are no "bright line" rules for determining when conduct is "recent." The determination must be based on a careful evaluation of the totality of the evidence. See ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." *Id.*

Applicant's mishandling of the COMSEC account occurred more than five years ago. She retained her security clearance and has not been cited for a security violation since she began working for her current employer in July 2005. Her performance

appraisals for the past three years have been outstanding, and her supervisor trusts her completely. I conclude that the first prong of AG ¶ 35(a) (“so long ago”) is established.

Applicant’s mishandling of the COMSEC account spanned several years and involved multiple derelictions. Therefore, I conclude that the second prong of AG ¶ 35(a) (“so infrequent”) is not established.

Applicant held a security clearance for many years before her security violations during 2000-2005. Her violations coincided with the breakup of her marriage, her involvement in an abusive relationship, excessive alcohol consumption, lack of involvement by her supervisor, and a stressful environment in which she was overworked. The record reflects that her personal life is no longer in turmoil, she has moderated her alcohol consumption, and her work environment is less stressful. Accordingly, I conclude that the third prong of AG ¶ 35(a) (“unusual circumstances”) is established.

In light of all the above circumstances, Applicant’s past security violations do not cast doubt on her current reliability, trustworthiness, and good judgment. Accordingly, I conclude that AG ¶ 35(a) is established.

Security concerns under this guideline also may be mitigated if “the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities.” AG ¶ 35(b). The record does not reflect “counseling” or remedial training, but it does reflect disciplinary action and Applicant’s remorse and acceptance of responsibility for her derelictions. Her performance appraisals, the endorsements by former and current supervisors, and her testimony and demeanor at the hearing demonstrated a positive attitude toward security responsibilities. I conclude that the second prong AG ¶ 35(b) (“positive attitude”) is established.

Finally, security concerns under this guideline may be mitigated if “the security violations were due to improper or inadequate training.” AG ¶ 35(c). I conclude that this mitigating condition is not established because the record reflects that Applicant received proper training and was aware of her responsibilities.

Guideline E, Personal Conduct

SOR ¶ 2.a cross-alleges Applicant’s security violations as personal conduct. SOR ¶¶ 2.b, 2.c, and 2.d allege that Applicant falsified material information during her employer’s investigation into her management of the COMSEC account and during her OPM background investigation. The concern under this guideline is set out in AG ¶ 15 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.

When falsification allegations are controverted, as in this case, the Government has the burden of proving them. An omission or misstatement, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

SOR ¶ 1.b alleges that Applicant falsely stated in an affidavit given to an OPM security investigator in April 2008 that she conducted an inventory in February 2005, when in fact the inventory was conducted by two of her colleagues. This allegation is not supported by substantial evidence. In her affidavit, Applicant stated that she knew that two required inventories had not been completed in the preceding nine months, and that she conducted an inventory alone because her supervisor was not available to assist her. Applicant was knowledgeable about the inventory requirements and would have known that the change-of-custodian inventory should be conducted jointly by the outgoing custodian and incoming custodian. Applicant's affidavit did not state that she conducted the change-of-custodian inventory. A fair reading of her affidavit is that she conducted one of the missing semi-annual inventories, not the change-of-custodian inventory. As such, her affidavit is not inconsistent with her former employer's ROI. I conclude that SOR ¶ 1.b is not supported by substantial evidence.

SOR ¶ 1.c alleges that Applicant told an OPM investigator that she did not conduct the inventories required during the a nine-month period in 2004-2005, but that she falsified material information by failing to disclose that she had not conducted the required inventories in 2000, 2001, 2003, and 2004. SOR ¶ 1.d alleges that Applicant falsely stated to her employer's investigators that she had completed the required inventories through 2003. These two allegations are supported by her former employer's ROI, showing that she did not complete the required inventories in 2000 and 2002. Applicant's falsifications establish AG ¶ 16(b) ("deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative").

The disqualifying condition relevant to the alleged security violations cross-alleged under this guideline is AG ¶ 16(c):

[C]redible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single 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.

AG ¶ 16(c) is established by Applicant's security violations and her falsifications about her security violations during her employer's investigation 2005 and her OPM background investigation in April 2008.

Security concerns raised by false or misleading answers during a security investigation may be mitigated by showing that "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG ¶ 17(a). This mitigating condition is not established because there is no evidence that Applicant attempted to correct her OPM affidavit or her statements to her former employer's security investigators.

Security concerns raised by personal conduct may be mitigated if "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." AG ¶ 17(c). For the reasons stated in the above discussion of Guideline K, I conclude that this mitigating condition is established for the security violations cross-alleged under this guideline. However, it is not established for Applicant's false statements. While overwork, lack of supervisory support, turmoil in her personal life, and negligence were significant factors causing her security violations, those factors do not justify intentional falsification. Her OPM affidavit was recent, having been submitted more than three years after her security violations and in connection with her current application to continue her clearance.

Security concerns raised by personal conduct also may be mitigated if "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." AG ¶ 17(d). This mitigating condition is partly established for Applicant's security violations, but not for her falsifications. Applicant has not obtained counseling, but she has acknowledged and accepted responsibility for her security violations. She has terminated the abusive relationship and moderated her consumption of alcohol. However, she has not acknowledged her falsifications, and she has not demonstrated that the factors that caused her to provide false and misleading information about her security violations have been alleviated.

Guideline F, Financial Considerations

The SOR alleges 20 delinquent debts, of which only three have been resolved. The concern under this guideline is set out in AG ¶ 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's financial history establishes three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts"); AG ¶ 19(c) ("a history of not meeting financial obligations"); and AG ¶ 19(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").

Security concerns based on financial problems can be mitigated by showing that "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." AG ¶ 20(a). This mitigating condition is not established because Applicant's delinquent debts are ongoing, numerous, and not the product of circumstances making them unlikely to recur.

Security concerns under this guideline also can be mitigated by showing that "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." AG ¶ 20(b). Both prongs, i.e., conditions beyond the person's control and responsible conduct, must be established.

Applicant's marital breakup in 2000 triggered a period of emotional turmoil, alcohol abuse, and financial mismanagement. However, she has not acted responsibly despite continuous employment and financial support from her parents. I conclude AG ¶ 20(b) is not established.

Security concerns under this guideline also can be mitigated by showing that "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." AG ¶ 20(c). This mitigating condition is not established because there is no evidence that Applicant has sought or received counseling and her financial problems are not under control.

Security concerns under this guideline also can be mitigated by showing that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." AG ¶ 20(d). Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

The judgment alleged in SOR ¶ 3.a was satisfied by involuntary wage garnishment and not by Applicant's good-faith efforts. The evidence reflects that the judgment alleged in SOR ¶ 3.e has been satisfied, and Applicant is making payments on the debt alleged in SOR ¶ 3.q. She has not resolved the remaining debts alleged in the SOR and has no plan for doing so. I conclude that AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 3.e and 3.q, but not for the other delinquent debts alleged in the SOR.

Security concerns under this guideline also can be mitigated by showing "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." AG ¶ 20(e). Applicant has not disputed any of the debts. She testified that the judgments alleged in SOR ¶¶ 3.d and 3.f were duplicates. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). However, she provided no documentation to show that the two judgments were for the same debt. I conclude that AG ¶ 20(e) is not established.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 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) the 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines K, E, and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is mature, intelligent, and hard working. She has worked as a Government employee or Government contractor and held a security clearance for all of her adult life. She has earned the respect of her supervisors in spite of her security violations five years ago. She has not, however, learned how to manage her personal

finances, and her falsifications during her former employer's investigation in 2005 and in her OPM affidavit in April 2008 raise doubts about her current trustworthiness and reliability.

After weighing the disqualifying and mitigating conditions under Guidelines K, E, and F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on her handling of protected information, but she has not mitigated the security concerns raised by her lack of candor during two security investigations and her continuing financial problems. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline K:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
Subparagraphs 2.c-2.d:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a-3.d:	Against Applicant
Subparagraph 3.e:	For Applicant
Subparagraphs 3.f-3.p:	Against Applicant
Subparagraph 3.q:	For Applicant
Subparagraph 3.r-3.t:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge