



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



In the matter of:)
)
-----) ISCR Case No. 07-14898
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Francisco Mendez, Esq., Department Counsel
For Applicant: *Pro se*

January 8, 2009

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations, E (Personal Conduct), and J (Criminal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on March 8, 2002, and recertified it on May 17, 2005. On April 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guidelines F, E, and J. The action was taken 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) promulgated by the President on December 29, 2005.

Applicant received the SOR on April 28, 2008; answered it on May 2, 2008; and requested a hearing before an administrative judge. DOHA received the request on May 22, 2008. Department Counsel was ready to proceed on August 28, 2008, and the case was assigned to me on October 16, 2008. DOHA issued a notice of hearing on October 20, 2008, scheduling the hearing for November 6, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 19 were admitted in evidence without objection. Applicant testified on her own behalf but submitted no documentary evidence.

Applicant did not prepare well for the hearing. She stated she was unaware of her right to a personal representative, even though she received the prehearing guidance advising her of that right.¹ After I explained her right to a personal representative, she stated she did not desire a personal representative and she was prepared to represent herself (Tr. 5-6). She acknowledged she had received copies of all documents that Department Counsel intended to offer; but she stated she had not "gone fully through the packet," because she assumed everything she had previously submitted was included (Tr. 16). She testified she had documentary proof that the delinquent debts and the unpaid judgment alleged in the SOR had been resolved, but she presented no documentary evidence at the hearing.

I granted Applicant's request to hold the record open until November 28, 2008, to enable her to present documentary evidence. She timely submitted Applicant's Exhibits (AX) A through CC, which were admitted without objection. DOHA received the transcript (Tr.) on November 18, 2008. The record closed on November 28, 2008. Department Counsel's comments on AX A through CC were received on December 8, 2008, and are attached to the record as Hearing Exhibit I.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.f, 1.j, 1.m, 1.n, and 1.o. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 41-year-old employee of a defense contractor working as an architectural compliance analyst for command and control systems. She has worked for her current employer since November 2001. She has a high school education and she has been taking college courses for several years but has not attained a degree (Tr. 9-10). She estimates she is about a year away from obtaining a bachelor's degree in applied engineering, but she has stopped attending classes because she can no longer afford them (Tr. 53). She has held a security clearance since September 2003.

A former employer who has known Applicant for more than 20 years and is aware of her financial history describes her as dependable, reliable, hard-working, conscientious, honest, peace-loving, and courteous (AX U). A coworker who is a senior DOD project manager and has known Applicant for 20 years considers her a woman of

¹ The correspondence file includes the cover letter to Applicant's facility security officer, transmitting the prehearing guidance, and Applicant's receipt for the packet dated October 29, 2008.

great integrity and extremely dedicated to her family (AX V). Another coworker who is a retired Navy Reserve officer considers her "as trustworthy as anyone [he] has worked with." He states that "there is no risk" with Applicant (AX Y). A senior associate with Applicant's current employer described her as the most qualified person to perform her current duties (AX X). Applicant's father, a retired Navy chief petty officer, considers her honest, trustworthy, and a great mother (AX W).

In 1991, Applicant and her mother jointly bought a house. Her mother moved out of the house in 1995 and moved in with Applicant's sister, leaving Applicant responsible for the household bills, homeowners' association dues, payments on a car, and other debts including the debt alleged in SOR ¶ 1.f. Her mother wrote some bad checks on their joint account, including a bad check that is the basis for the debt alleged in SOR ¶ 1.i (Tr. 71). Applicant was a single parent with one child at the time at the time (Tr. 35).

Applicant was married in May 1999. Judgments for delinquent debts were entered against her in March 2000 (GX 2), October 2000 (GX 3), and December 2001 (GX 4). The October 2000 judgment is alleged in SOR ¶ 1.f. Her husband left her in 2002, and they were legally separated in January 2003 (Tr. 37, GX 1 at 2). Applicant has filed for divorce and her petition is pending decision (Tr. 50). Applicant has a 21-year-old child from a previous relationship and an 8-year-old born during her marriage (Tr. 51). The older child is in his final year of college and living away from home, and the younger child lives with her (Tr. 54).

When Applicant submitted her SF 86 on March 8, 2002 and recertified it in May 17, 2005, she answered "no" to question 38, asking if she had ever been more than 180 days delinquent on any debts during the past seven years, and "no" to question 39, asking if she was currently more than 90 days delinquent on any debts. She also answered "no" to question 43, asking if she had any additional remarks to enter on her application. She did not disclose any delinquent debts.

Applicant's credit report dated March 21, 2002, reflected payments that were 120 days past due on a real estate mortgage, nursery and landscaping contract, and a collection account; a personal loan and a credit card account 90 days past due, two medical accounts and the cell phone account alleged in SOR 1.e charged off as bad debts, 11 unpaid collection accounts, and numerous unpaid judgments, including the debt alleged in SOR ¶ 1.f, and six judgments obtained by her homeowners' association (GX 6 at 3-6). Applicant sold her house in March 2002, with closing set for May 28, 2002. She used the \$17,000 profit on the house to pay off debts (GX 7 at 7-14).

On the same day as the closing on the sale of her house, she was interviewed by a security investigator, who confronted her with her credit report (Tr. 100-01). Applicant told the investigator all delinquent debts except the landscaping debt were paid and she was awaiting confirmation by mail (GX 7 at 2-3). She submitted documentation to the investigator showing she had sent a post-dated check in payment of the cell phone bill (SOR ¶ 1.e) and confirming payment of two delinquent medical accounts (GX 7 at 8-9).

At the hearing, Applicant admitted the judgment alleged in SOR ¶ 1.f as well as two other delinquent debts incurred before she submitted her SF 86 in March 2002 (Tr. 97; GX 2, 3, and 4). She testified she did not list any delinquent debts or unpaid judgments because all her debts were paid by the time she submitted her SF 86 (Tr. 96, 104). She also testified she listed her delinquent debts on a separate sheet that was not included in GX 1 (Tr. 105, 110-12). She testified she had copies of the extra sheet that she could provide (Tr. 113), and I informed her that I would keep the record open so that she could provide it (Tr. 121). In her post-hearing submission, she submitted a five-page packet from the security specialist who processed her SF 86 (AX A at 1-5); pages 5 through 8 of a SF 86; unsigned authorizations for release of information; a certification by the personnel specialist; signature pages for the authorizations for release of information; the signature page for the SF 86 dated March 8, 2002 and recertified on May 17, 2005; and an instruction sheet for completing the SF 86 (AX A at 6-21). She also submitted the first four pages of a SF 86 dated August 25, 2004 (AX B), and seven pages from the SF 86 dated March 8, 2002 (AX C). None of these documents listed any delinquent debts or unpaid judgments.

Applicant's post-hearing submission also included an undated letter, apparently send to the creditor alleged in SOR ¶ 1.f, proposing a payment plan to begin on April 30, 2002 (AX AA). She also submitted an undated document entitled "clearance investigation" promising to pay some unidentified debts as soon as possible (AX BB); and a two-line document, with no addressee, confirming a conversation on August 14, 2002, regarding payment of outstanding judgments with the proceeds from the sale of her home (AX CC).

Applicant's spouse left the state in January 2003. He disappeared and could not be found for about two years (Tr. 42). He did not pay the court-ordered child support and now owes almost \$80,000 in arrearages, of which about \$70,000 is child support and \$10,000 is spousal support (AX D; Tr. 52). He appeared in court in May 2008 in response to a show-cause order, but the hearing was continued until December 17, 2008 (Tr. 50-51). The three pay day loans alleged in SOR ¶¶ 1.s, 1.t, and 1.u were incurred by Applicant's spouse, using their joint checking account, without her knowledge (Tr. 46).

On April 20, 2003, a default judgment was entered against Applicant and her spouse for a delinquent electric bill (GX 9). On October 1, 2005, the credit card debt alleged in SOR ¶ 1.n was referred for collection, and a default judgment was entered against Applicant on April 4, 2006 (GX 12). In her answer to the SOR, Applicant admitted the debt but stated she had a payment plan in effect. At the hearing, she testified it was paid.

In response to DOHA interrogatories on August 10, 2003, Applicant stated she did not disclose several delinquent debts, including the debt alleged in SOR ¶ 1.e, because they had been paid. She also stated she did not disclose three wage garnishments because she was unaware her spouse had not paid the joint debts and unaware judgments that had been entered against her and her spouse (GX 10 at 5).

The debt alleged in SOR ¶ 1.j was for a corporate credit card for a former employer. When Applicant's employer did not pay the account, she made payment arrangement and paid off the debt. She is now seeking reimbursement from the former employer (Tr. 74).

The credit card debt alleged in SOR ¶ 1.n was in the name of Applicant's spouse, but Applicant was an authorized user. After her spouse left the household, she did not receive any bills, but she received a summons when she and her spouse were sued by the creditor (Tr. 82). She testified she contacted the lawyers for the creditor and arranged a payment plan because she was concerned about her security clearance (Tr. 84-85).

The following table summarizes the evidence concerning the debts alleged in the SOR.

SOR	Debt	Amount	Status	Evidence
1.a	Collection	\$74.01	Resolved	AX F ² at 5
1.b	Telephone	\$248.76	Settled, same as 1.h	AX H at 5
1.c	Telephone	\$122.91	Settled, same as 1.h	AX H at 5
1.d	Cell phone	\$373.38	Settled	AX H at 2
1.e	Cell phone	\$100	Settled	AX H at 5;
1.f	Judgment	\$698.34	Paid	GX 10 (attachment VI)
1.g	Government debt	\$1,735	Disputed; deleted from CBR	AX F at 1
1.h	Collection	\$245	Same as 1.b and 1.c	AX H at 5
1.i	Bad check	\$224	Paid	AX F at 3
1.j	Credit card	\$2,848.43	Paid	AX F at 4
1.k	Credit card	\$1,894	Paid	AX F at 7
1.l	Credit card	\$2,366	Paid	AX F at 1
1.m	Student loan	\$9,366.42	Making payments	GX 14 at 37-40; Tr. 79
1.n	Credit card	\$2,855.58	Paid; not on CBR	GX 12; Tr. 85; AX F; AX G
1.o	Car repossession	\$31,663	Paid	AX F at 4
1.p	Bad check	\$212	Paid; not on CBR	GX 13 at 2; AX F; Tr. 90
1.q	Cable	\$67	Paid	AX F at 3
1.r	Bad check	\$50	Paid	GX 14 at 45; AX G
1.s	Pay day loan	\$206	Settled	AX H at 3
1.t	Pay day loan	\$581	Settled	AX H at 4
1.u	Pay day loan	\$577	Not on CBR	AX G

As of the date the record closed, Applicant had resolved all her delinquent debts except her student loans, which are still reflected on her credit report as delinquent (AX F at 5; AX G at 4). She made monthly payments in July, August, and December 2007

² The last two pages of AX F and AX G were missing from Applicant's post-hearing submission.

(GX 14 at 36-38), and she signed a loan rehabilitation contract in January 2008 (GX 14 at 34-35). She testified she was making payments and had documentation of recent payments (Tr. 80). However, her most recent credit report reflected the last payment in March 2008 (AX F at 5; AX G at 4), and her post-hearing submission did not include any documentation of payments between March 2008 and the date the record closed.

In response to DOHA interrogatories, Applicant submitted a personal financial statement on May 28, 2002, reflecting net monthly income of \$10,194, expenses of \$2,260, and debt payments of \$5,372, leaving a net monthly remainder of about \$2,562. Her net monthly income at that time included her spouse's monthly earnings of about \$5,165 (GX 7 at 4). She testified at the hearing that her current net monthly income is about \$6,000 (Tr. 54).

In her post-hearing submission, Applicant submitted budget data for December 2001 (AX P) and January, February, April, and October 2002 (AX L through O and Q through T). These documents are inconsistent with her personal financial statement of May 2002 in that they reflect her spouse's net income as ranging from about \$1,300 (AX K) to \$2,400 (AX J), much less than she reported in May 2002. Furthermore, she submitted three different budgets for April 2002, reflecting net monthly income of \$6,196 on one version (AX K), \$4,896 on another (AX L), and \$7,317 on the third (AX M). Finally, she submitted six versions of her budget for October 2002 (AX N through T), reflecting net monthly income ranging from \$4,794 (AX T) to \$13,177 (AX R). In light of these unexplained inconsistencies, I have given these post-hearing budget documents little weight.

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 and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (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 over-arching adjudicative goal is a fair, impartial and common sense 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 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.

Clearance decisions must be “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 not necessarily a determination as to the loyalty of the applicant. It 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18 as follows:

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.

Several disqualifying conditions under this guideline could raise a security concern and may be disqualifying in this case. AG ¶ 19(a) is raised where there is an “inability or unwillingness to satisfy debts.” AG ¶ 19(b) is a two-pronged condition that is raised where there is “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.” AG ¶ 19(c) is raised when there is “a history of not meeting financial obligations.” AG ¶ 19(e) is raised when there is “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.” Applicant’s financial history raises AG ¶¶ 19(a), (c), and (e), but AG ¶ 19(b) is not raised because there is no evidence of “frivolous or irresponsible spending.”

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (c), and (e), 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 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 is a compound mitigating condition, with three disjunctive prongs and one conjunctive prong. It may be established by showing the conduct was “so long ago,” or “so infrequent,” or “occurred under such circumstances that it is unlikely to recur.” If any of the three disjunctive prongs are established, the mitigating condition is not fully established unless the conduct “does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.”

The first prong of AG ¶ 20(a) (“so long ago”) is not established because several of Applicant’s delinquent debts were not resolved until recently, and her delinquent student loans are not yet resolved. The second prong (“so infrequent”) is not established because her delinquent debts were numerous and spanned several years. The third prong (“under such circumstances that it is unlikely to recur”) is established for all her debts except the student loans. The debts incurred before Applicant filed her initial SF 86 in March 2002 were largely the result of her mother moving out of their house and leaving her with numerous unpaid bills. Most of the remaining debts alleged in the SOR were incurred after Applicant’s spouse abandoned her, disappeared for about two years, and failed to pay child support. The credit card debt alleged in SOR ¶ 1.j occurred when her employer failed to pay the corporate credit card account. On the other hand, the delinquent student loans were not incurred because of unusual circumstances but rather because Applicant decided to continue attending college courses in spite of her limited income. I conclude AG ¶ 20(a) is established (“unusual circumstances” and “does not cast doubt” on reliability, trustworthiness, or good

judgment) for all the delinquent debts alleged except the student loans alleged in SOR ¶ 1.m.

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.

The irresponsible conduct of Applicant’s mother and spouse were conditions beyond her control. For the most part, she acted responsibly: living modestly, paying what she could, and negotiating settlements where possible. Her student loans were voluntarily incurred and were not the product of conditions beyond her control. I conclude AG ¶ 20(b) is established for all the debts alleged except the student loans in SOR ¶ 1.m.

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 Applicant sought or received counseling, and her financial situation is not yet 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). 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.” ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). “[A]n applicant is not required, as a matter of law, to establish that [he/she] has paid off each and every debt listed in the SOR. . . . All that is required is that an applicant demonstrate that [he/she] has . . . established a plan to resolve [his/her] financial problems and taken significant actions to implement that plan.” ADP Case No. 06-18900 (App. Bd. Jun. 6, 2008).

Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicant was strongly motivated by the pressure of obtaining a clearance. She has resolved all her debts except her student loans, concerning which the documentary evidence reflects only intermittent payments. Even though she signed a loan rehabilitation contract in January 2008, she produced no evidence of compliance with that contract, except for one payment in March 2008. By her own admission, she has run out of money. I conclude AG ¶ 20(d) is established for all her delinquent debts except the student loans.

Security concerns under this guideline also can be mitigating 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 disputed several debts reflected on her credit reports, including the debt alleged in SOR ¶ 1.g, and it was deleted from her credit report. AG ¶ 20(e) is established for this debt.

Guideline E, Personal Conduct

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.

The relevant disqualifying condition in this case is “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.” AG ¶ 16(a).

When a falsification allegation is controverted, as in this case, the government has the burden of proving it. An omission, standing alone, does not prove an applicant’s state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning 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).

When Applicant first submitted her SF 86 on March 8, 2002, she had numerous delinquent debts and numerous unpaid judgments against her. At least three judgments had been unpaid for more than 180 days, and many of the debts were more than 90 days delinquent. She admitted at the hearing that she was aware of the debts and unpaid judgments when she executed her SF 86. Nevertheless, she answered all the financial questions in the negative and disclosed none of the debts and judgments.

Applicant presented herself at the hearing as intelligent, well-educated, and articulate. She has never contended she misunderstood the questions. Instead, she gave two contradictory explanations for her nondisclosure. She first testified she answered the questions in the negative because all her debts had been paid from the proceeds of the sale of her home. She later testified she listed her debts on her SF 86 and that her personal copy reflected the listing of those debts. Her first answer is contradicted by the record evidence that the closing on the sale of her home did not occur until almost three months after she submitted her SF 86. Her second answer is contradicted by her negative answers to questions 38 and 39, her negative answer to question 43, asking if she had any additional remarks, and by the absence of any list of delinquent debts in all the documents she submitted in her post-hearing submission. I

find her explanations contradictory, implausible, and unpersuasive. I conclude she answered “no” to the financial questions, knowing those answers were false, and she intentionally failed to disclose her delinquent debts on her SF 86. Thus, I conclude AG ¶ 16(a) is raised, shifting the burden to Applicant to refute, explain, extenuate, or mitigate the facts.

Security concerns raised by false or misleading answers on a security clearance application 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). Applicant was interviewed by a security investigator on May 28, 2002, shortly after submitted her SF 86, but the evidence indicates she did not initiate the contact, and she provided information about her delinquent debts only after being confronted with her credit report. I conclude AG ¶ 17(a) is not established.

Security concerns raised by personal conduct also may be mitigated by showing that “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). This mitigating condition is not established, because her intentional falsification was serious misconduct, it was repeated when Applicant recertified her SF 86 in May 2005, it pertains to her current application, it did not happen under “unique circumstances,” and it raises doubt about her reliability and trustworthiness.

Guideline J, Criminal Conduct

The concern raised by criminal conduct is that it 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.” AG ¶ 30. Conditions that could raise a security concern and may be disqualifying include “a single serious crime or multiple lesser offenses” and “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted.” AG ¶¶ 31(a) and (c).

It is a felony, punishable by a fine or imprisonment for not more than five years, or both, to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of the executive branch of the government of the United States. 18 U.S.C. § 1001. Security clearances are matters within the jurisdiction of the executive branch of the government of the United States. A deliberately false answer on a security clearance application is a serious crime within the meaning of Guideline J. Applicant's false answers on her SF 86 raise the disqualifying conditions in AG ¶ 31(a) and (c), shifting the burden to Applicant to rebut, explain, extenuate, or mitigate the facts.

Security concerns under this guideline may be mitigated by evidence that “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." AG ¶ 32(a). This condition is not established because Applicant's falsification was recent, did not happen under unusual circumstances, and casts doubt on her reliability and trustworthiness.

Security concerns based on criminal conduct may be mitigated if "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." AG ¶ 32(d). This mitigating condition is not established because Applicant's falsifications were recent, and she has not acknowledged her conduct or expressed remorse. Instead, she persisted in denying her falsification at the hearing.

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 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guidelines F, E, and J 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 a mature adult who suffered the financial consequences of an irresponsible mother and spouse. She has worked hard to resolve her financial problems, but has done so in a reactive mode, responding to problems as they occur. She has not sought financial counseling. Her strong desire to obtain a college degree, while admirable in many respects, has contributed significantly to her financial problems. She has made great strides in eliminating her delinquent debts, but she has not provided proof that she has resolved her delinquent student loans. Although she presented evidence of her reputation for integrity, the record does not support her explanations for not disclosing her turbulent financial history. Candor is essential in an

environment where self-reporting is essential to the protection of national security even if it results in personal detriment.

After weighing the disqualifying and mitigating conditions under Guidelines F, E, and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations, personal conduct, and criminal conduct. Even if she had resolved all her financial problems, her falsification of her SF 86 would leave me with sufficient doubt about her reliability and trustworthiness to preclude a favorable clearance decision. 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 for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraphs 1.o-1.u:	For Applicant

Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant

Paragraph 3, Guideline J (Criminal Conduct): **AGAINST APPLICANT**

Subparagraph 3.a:	Against Applicant
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Conclusion

In light of all of the circumstances, 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