



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 07-14962
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstom, Esquire, Department Counsel  
For Applicant: Brian J. Di Stefano, Esquire

March 10, 2009

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is granted.

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on March 27, 2006. On June 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on July 7, 2008. She answered the SOR in writing through counsel on July 21, 2008, and requested a hearing before an

administrative judge. DOHA received the request on July 28, 2008. Department Counsel was prepared to proceed on August 21, 2008, and I received the case assignment on September 4, 2008. DOHA issued the first notice of hearing on October 1, 2008 for a hearing date of October 16, 2008. Applicant's counsel requested a continuance on October 14, 2008. I granted Applicant's request for a delay by Order dated October 14, 2008. DOHA issued a second hearing notice on November 10, 2008 and I convened the hearing as scheduled on December 9, 2008. The government offered 20 exhibits (GE) 1 through 20, which were received and admitted into evidence without objection. Applicant and one witness testified on her behalf. She submitted 13 exhibits (AE) A through M, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on December 30, 2008. I held the record open until December 31, 2008, for Applicant to submit additional matters and until January 14, 2009 for Department Counsel to brief several legal issues. On December 30, 2008, Applicant submitted three additional documents through counsel, which were marked as AE N through P and admitted without objection. Department Counsel submitted a brief on January 14, 2009. Applicant did not file a response, which was due January 26, 2009. The record closed on January 26, 2009.

### **Findings of Fact**

In her Answer to the SOR, dated July 21, 2008, Applicant admitted the factual allegations in ¶¶ 1.d, 1.f, 1.g, 1.i, 1.j, and 1.m of the SOR. She denied the factual allegations in ¶¶ 1.a-1.c, 1.e, 1.h, 1.k, 1.l, 1.n, and 2.a-2.d of the SOR.<sup>1</sup>

Applicant, who is 60-years-old, works for a Department of Defense contractor. She began her current employment in January 2005 as an administrative assistant. She now works as an operations analyst. Her supervisors and co-workers describe her as very professional, responsible and dependable. She performs her work duties very well and all recommend her for a clearance. Her references praise her work skills and her ability to get the job done. She has received on-the-spot awards and other commendations from her employer.<sup>2</sup>

Applicant married her husband 42 years ago at the age of 18. They have seven children, ages 18 to 42. For the last 42 years, her husband has been self-employed, working as a contractor in the construction industry. During these years, his work and income have fluctuated with the peaks and valleys of the economy. For many years,

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<sup>1</sup>When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern. See ISCR Case No. 07-18525 at 2-5 (App. Bd. Feb. 18, 2009), (concurring and dissenting in part).

<sup>2</sup>GE 1; AE B - AE L; Tr. 53-56.

Applicant remained at home with her children, whom she home schooled. From 1987 until 2002, she lived on a 30-acre farm in a rural area of the country.<sup>3</sup>

In 1997, after Applicant's stepfather died, she moved her seriously ill mother to her farm so that she could care for her. Her mother suffered from multiple medical problems and died five months later on October 31, 1997. Her mother's medical care resulted in numerous expenses, most of which Applicant charged on her mother's credit card pursuant to power of attorney, and for which her mother's estate lacked the cash to pay. Applicant paid these bills for several years until she could no longer pay her mother's debts.<sup>4</sup>

Upon her mother's death and pursuant to her mother's will, Applicant, an only child, and her seven children inherited her parent's home in another state. Applicant also received \$3,000 from a life insurance policy. Applicant did not probate her mother's will, although she twice attempted to do so.<sup>5</sup>

In 1999, Applicant and her husband began living apart. She remained on their farm with some of their children and he moved into her parents' home in another state, continuing to work in the construction industry as a contractor. Over the next three years, she worked sporadically in the restaurant industry. In 2002, she moved into her parents' home with her husband and began working, initially part-time.<sup>6</sup>

In 2002, Applicant's husband, who is now 62 years old, suffered a heart attack. Since his heart attack, the doctor's have placed stints in his arteries. In 2007, he was hospitalized for bleeding ulcers. He also suffers from diabetes. His ability to work is more limited because of his health problems.<sup>7</sup>

Applicant's tax returns reflect she and her husband's gross income as follows: \$48,087 for 1999, \$10,423 for 2001, \$2,432 for 2002, \$14,890 for 2003, \$18,565 for 2004, \$30,723 for 2005, \$47,000 for 2006, and \$26,126 for 2007. After moving into her parents' home, Applicant found it difficult to pay household expenses on two properties with her part-time job and her husband's fluctuating income. She could not pay the property taxes on her parents' home. As a consequence, the State sold the house. The holder of the tax sale certificate moved to foreclose on the property in 2003. Because she wanted to retain possession of her parents' home, Applicant sought legal counsel.

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<sup>3</sup>GE 1, at 17; Tr. 32.

<sup>4</sup>Tr. 20-21, 27-28.

<sup>5</sup>Id. at 19-20, 27. Because her mother died in the state in which Applicant lived and owned a house in another state, the resolution of Applicant's mother's estate was much more complicated. Applicant attempted twice to probate her mother's will without success. Tr. 65-67.

<sup>6</sup>GE 1; Tr. 24.

<sup>7</sup>Tr. 32, 102, 110.

Her attorney advised her to file bankruptcy and to probate her mother's will. She hired an attorney to handle the bankruptcy action and another attorney to resolve her mother's estate issues. On the recommendation of legal counsel, in April 2004, Applicant filed a Chapter 13 bankruptcy petition for the sole purpose of stopping the foreclosure on her parents' house.<sup>8</sup>

The Chapter 13 bankruptcy petition listed the farm, and her parents' house as Applicant's real property with a total value of \$37,500, and personal property, including an old car, with a total value of \$1,750. Applicant identified her secured creditors as the tax certificate holder, the Internal Revenue Service (IRS) and the holder of the car note, and her unsecured creditors as several credit card holders. One judgment was listed. Several of the debts listed are from her mother's estate.<sup>9</sup>

The bankruptcy court docket sheet reveals that creditors were notified and that only one creditor responded. Following a hearing in June 2004, Applicant developed a repayment plan, which required her to pay \$95 for four months, and then \$403 a month for 56 months. After a hearing in August 2004, the court confirmed the plan in an Order dated October 21, 2004. The bankruptcy court records indicate Applicant made some payments under the plan. In June 2006, through counsel, Applicant filed a motion to acquire post-petition debt. One month later, a certificate of consent related to this motion was filed with the court. On July 27, 2006, the bankruptcy court entered an order approving the settlement and granting the relief requested by the above motion. Three months later the bankruptcy trustee filed a motion to dismiss Applicant's Chapter 13 case, which the court granted on November 1, 2006. The bankruptcy court did not dismiss Applicant's Chapter 13 petition for Applicant's failure to appear for the creditors meeting or for failure to comply with terms of her repayment plan. Rather, the court dismissed this case based on an approved settlement agreement. The terms of the settlement agreement have not been submitted into this record.<sup>10</sup>

Applicant's bankruptcy attorney advised that he recommended Applicant file a Chapter 13 bankruptcy to stop the foreclosure on her parents' home and to place this property in her mother's estate, goals which were achieved. Through appropriate legal process, Applicant's parents' home became part of her mother's estate and title transferred to Applicant as her mother's sole heir, subsequent to Applicant's children agreement to relinquish any rights to the property.<sup>11</sup>

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<sup>8</sup>GE 2 (Attachments including letter from attorney); GE 5 (bankruptcy petition); AE P (tax returns); Tr. 24, 29-20.

<sup>9</sup>GE 5 (Bankruptcy petition).

<sup>10</sup>GE 2 (Interrogatories and answer with attachments, including docket sheet for Applicant's bankruptcy case); GE 3.

<sup>11</sup>GE 2, attachments; Tr. 66.

Applicant applied for a \$120,000 mortgage in 2006, which was approved. To actually receive her funds, the mortgagor required Applicant to dismiss her Chapter 13 bankruptcy, which the court did on November 1, 2006. Applicant proceeded to settlement on December 15, 2006. The settlement funds included disbursements to pay taxes, including the \$16,409 IRS lien, the judgment listed in her bankruptcy, attorneys' fees, and \$4,500 to an individual Applicant believes resolved the remaining credit card debt in the bankruptcy. Her attorney advised that the bankruptcy included miscellaneous credit card debt he believed was owed by Applicant's mother's estate and that since the creditors for the bank credit cards did not file a claim, it was unnecessary to pay the claims. He also advised that all claims were paid, although full documentation on this issue is not of record.<sup>12</sup>

Applicant's current annual income is \$63,150. Her gross monthly income is approximately \$5,250 and her net income is approximately \$3,400 a month. Because of his health and the slowdown in the economy, especially the construction industry, Applicant's husband contributed \$400 to the family income in December 2008, although this amount has been much higher in other months. She depends on her husband's monthly contribution to pay household expenses. Her fixed monthly household expenses include \$1,429 for the mortgage, \$400 for electric, \$40 for water, \$96 for TV hookup, \$42 for the internet, and \$800 for car insurance. Other household expenses average around \$1,000. These expenses can fluctuate and include food, gasoline, and miscellaneous expenses. Her February 2008 financial statement reflects that she generally has sufficient income to meet her monthly expenses and her credit report reflects that she does not use credit cards to pay monthly expenses. Two sons live with her, but do not contribute significantly to the household expenses. Over the last 42 years, payment of household expenses has always been a challenge to Applicant and her husband.<sup>13</sup>

In January 2008, Applicant wrote her mortgage holder advising that she had encountered unexpected and high expenses. She asked for assistance based on hardship. Her mortgage holder worked with her. As a result, her mortgage payments actually decreased about \$100 a month. To assure that she has sufficient money each month to pay her mortgage, Applicant has a separate checking account for her mortgage. Each pay check, she deposits one-half of the mortgage into this account. Although she has been late, she pays the mortgage each month.<sup>14</sup>

The SOR lists 13 debts which raised a security concern for Applicant. Two debts belong to her mother's estate, three debts are paid or resolved, two debts have a zero balance, and two debts are not Applicant's. The debts are outlined in the following table:

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<sup>12</sup>GE 2 at 25.

<sup>13</sup>GE 2, attachments; Tr. 54, 85-89.

<sup>14</sup>AE A; Tr. 84.

<b>SOR ¶</b>	<b>TYPE OF DEBT CREDITOR</b>	<b>AMOUNT</b>	<b>STATUS</b>	<b>EVIDENCE</b>
1.b.	mortgage	\$3,030.00	Resolved; current	AE A; AE O
1.c.	judgment	\$ 438.00	Not Applicant's debt	AE N
1.d	credit card	\$ 411.00	Zero balance	GE 2 at 8-9; GE 6
1.e.	judgment	\$1,543.00	Unpaid	Tr. 34
1.f.	judgment	\$ 768.00	Husband's business debt (He thought paid)	Tr. 35, 83, 117
1.g.	credit card	\$ 531.00	Zero balance	GE 2 at 8-9; GE 6
1.h.	federal tax lien	\$ 769.00	Paid	AE P
1.i.	medical bill	\$ 187.00	Unpaid	Tr. 38
1.j.	medical bill	\$ 147.00	Unpaid	Tr.
1.k.	car insurance	\$1,138.00	Paid, not verified	Tr. 41
1.l.	library fine	\$ 173.00	Unpaid	Tr. 107
1.m.	credit card	\$1,363.00	Mother's debt	Tr. 42
1.n.	credit card	\$7,518.00	Mother's debt	Tr. 42

Applicant denies having any credit cards in her name. She used her mother's credit cards to pay for her mother's medical expenses. After her mother died, she paid on these debts until she could no longer pay the monthly bills. The two credit cards identified in SOR allegations 1.m. and 1.n are not listed on any of Applicant's credit reports.<sup>15</sup> These two debts are listed in her Chapter 13 bankruptcy petition with partial accounts numbers which do not match any account numbers on her credit reports. Applicant's credit reports contain the two credit card debts listed in SOR allegations 1.d and 1.g. The reports show a zero balance and indicate the accounts have been transferred or are a sold, charged off account. The credit reports do not reflect a new holder of these accounts. In addition, the April 7, 2006 and May 27, 2008 credit reports show a third account with the same creditor, noting that the account is part of a Chapter 13 wage earner's plan and has a zero balance.<sup>16</sup>

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<sup>15</sup>Applicant admitted owing this debt in her response to the SOR because she had paid it for her mother for several years. Tr. 107-108.

<sup>16</sup>GE 5 (Bankruptcy petition); GE 6 (Credit report, dated May 27, 2008); GE 7 (Credit report, dated October 18, 2007); GE 8 (Credit report, dated April 7, 2006).

Applicant disagrees with the two debts listed in SOR allegations in 1.j and 1.l, but she has not filed a formal complaint with the credit reporting companies or with the creditors. She told the investigator she would pay these debts and again, at the hearing, stated she would pay the debts under protest as she does not believe she owes the money. Applicant continues to insure her cars with the insurer listed in SOR allegation 1.k. To keep her insurance, she needed to pay her overdue balance. She has not provided documentation to show she does not owe this creditor.<sup>17</sup>

Applicant and her husband recently decided to sell the farm as they cannot afford the cost of it. They have talked with a realtor, but have not signed a sales contract. They still owe a small amount of money on the mortgage and the property taxes of \$300 for 2008. The mortgagor is working with them. Applicant now manages the household finances. Her husband did in the past and did not always keep her informed of the status of the debts. As a self-employed individual, Applicant's husband had no benefits, such as medical insurance or disability insurance. In the past, she did the family taxes. As a result of the tax lien for 1999 taxes, Applicant hired an accountant to review her tax preparation and filings for every year from 1999 forward and to prepare and file her yearly tax returns. She has always filed her federal and state tax returns. She and her husband took their first vacation recently. They flew to a distant state to visit a daughter.<sup>18</sup>

On March 27, 2006, Applicant completed her security clearance application. She answered "yes" and listed one debt to the following question in her SF-86:<sup>19</sup>

Question 28a. Your Financial Delinquencies - 180 days

In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?

When she answered this question, Applicant listed one judgment, but did not list the debts identified in SOR allegations 1.e, 1.f, 1.j, 1.l, 1.m, and 1.n. She also listed her bankruptcy.

Applicant answered "no" to the following questions in her SF-86:

Question 28b. Your Financial Delinquencies - 90 Days

Are you currently over 90 days delinquent on any debt?

Question 27c. Your Financial Record

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<sup>17</sup>Tr. 40, 41, 107.

<sup>18</sup>Tr. 32, 39-40, 70-72, 112-113, 119.

<sup>19</sup>GE 1, at 1, 10-11.

In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?

Concerning Section 23, Her Police Record, Applicant answered “no” to all six questions about past arrests.<sup>20</sup>

Applicant strenuously denied that she deliberately omitted information on her security clearance application. She has little memory of being arrested for anything. She did not list any traffic offenses when answering Question 23. She believed the omitted offenses were traffic misdemeanors, and did not think they constituted criminal conduct. Each traffic offense fine was less than \$150 although the fine plus court costs was \$243 for a 2003 offense. She did not list the tax lien filed by the IRS. She acknowledged that in 2003, she learned about the tax lien, which the IRS filed against her farm, not the house in which she lived. She did not think about the lien, in part because the lien had been filed against the farm and in part because she thought it was being resolved by her bankruptcy. Two of the debts not listed are debts directly related to her mother, and are debts which she does not consider hers. She did not know about the \$768 judgment, as this debt belonged to her husband’s business. She listed the dental bill as the judgment. She acknowledged the library fine to the investigator, which is not listed in any of the credit reports or her bankruptcy petition. She did not list the 1995 judgment for a medical bill. The most recent credit report and the Lexis-Nexis judgment information sheets do not reflect that her tax liens were paid in January 2007 and released by the IRS in April 2008. The credit reports also show a judgment which does not belong to her and do not reflect the 1995 judgment.<sup>21</sup>

Applicant understood that if she lied on her security clearance application she would lose her job. She denied she would lie and omit material facts purposely or knowingly. She admits she made big mistakes in responding to the questions. She filled out the form to the best of her abilities. In hindsight, she should have talked with someone, “gotten” advice, and “gotten” a credit report before completing her application. Applicant was not the best historian at the hearing, in part due to nervousness.<sup>22</sup>

### **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.

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<sup>20</sup>*Id.* at 26-27, 29-31. SOR alleges she falsified this answer when she did not list her October 2000 misdemeanor charge for driving on a suspended operator’s license, her December 2000 charge for failure to appear, and a January 2003 speeding ticket and driving on a suspended license.

<sup>21</sup>GEs 6-8; GEs 13-18; GE 20; AE P; Tr. 60-62, 107, 117.

<sup>22</sup>Tr. 105-106.



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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.<sup>23</sup>

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<sup>23</sup>After any decision, the losing party has a right to appeal the case to the Defense Office of Hearings and Appeals Appeal Board. The Appeal Board's review authority is limited to determining whether three tests are met:

E3.1.32.1. The Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record. In making this review, the Appeal Board shall give deference to the credibility determinations of the Administrative Judge:

E#.#.32.2. The Administrative Judge adhered to the procedures required by E.O. 10865 (enclosure 1) and this Directive: or

E3.1.32.3. The Administrative Judge's rulings or conclusions are arbitrary, capricious, or contrary to law.

The Appeal Board does not conduct a "*de novo* determination", recognizing that its members have no opportunity to observe witnesses and make credibility determinations. The Supreme Court in *United States v. Raddatz*, 447 U.S. 667, 690 (1980) succinctly defined the phrase "*de novo* determination":

[This legal term] has an accepted meaning in the law. It means an independent determination of a controversy that accords no deference to any prior resolution of the same controversy. Thus, in *Renegotiation Board v. Bannerkraft Clothing Co.*, 415 U.S. 1, 23 [(1974)], the Court had occasion to define "*de novo* proceeding" as a review that was "unfettered by any prejudice from the [prior] agency proceeding and free from any claim that the [agency's] determination is supported by substantial evidence." In *United States v. First City National Bank*, 386 U.S. 361,368 [(1967)], this Court observed that "review *de novo*" means "that the court should make an independent determination of the issues" and should "not . . . give any

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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated some delinquent debt and was unable to pay

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special weight to the [prior] determination of “the administrative agency.

(Internal footnotes omitted). See ISCR Case No. 07-10396 (App. Bd. Oct. 2, 2008) and ISCR Case No. 07-07144 (App. Bd. Oct. 7, 2008). In ISCR Case No. 05-01820 (App. Bd. Dec 14, 2006), the Appeal Board criticized the administrative judge’s analysis, supporting grant of a clearance for a PRC-related Applicant, and then decided the case itself. Judge White’s dissenting opinion cogently explains why credibility determinations and ultimately the decision whether to grant or deny a clearance should be left to the judge who makes witness credibility determinations. *Id.* at 5-7. See *also* ISCR Case No. 04-06386 at 10-11 (App. Bd. Aug. 25, 2006)(Harvey, J., dissenting) (discussing limitations on Appeal Board’s authority to reverse hearing-level judicial decisions and recommends remanding cases to resolve material, prejudicial error). Compliance with the Agency’s rules and regulations is required. See *United States ex. rel. Acardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Lopez v. FAA*, 318 F.3d 242, 247-248 (D.C. Cir 2003); *Nickelson v. United States*, 284 F. Supp.2d 387, 390 (E.D. Va. 2003)( explaining standard of review).

some obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” This mitigating condition does not apply.

Under AG ¶ 20(b), it may be mitigating where “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.” Applicant and her husband have always had financial problems because he was self-employed in the construction industry, an industry where work is directly impacted by the ups and downs of the economy. In 2002, her husband suffered a heart attack, which kept him out of work for some time. When he did not work, her husband did not earn money. He did not have disability income. In 2007, their household income was again adversely affected by her husband’s health issues. As recommended by her attorney, Applicant filed bankruptcy to stop the foreclosure on her parents’ house. During this process, Applicant’s attorney probated her mother’s will and succeeded in transferring the house from her mother’s estate into Applicant’s name. Once this occurred, Applicant applied for, then qualified for a mortgage, which she received on the condition she dismiss the Chapter 13 bankruptcy. The bankruptcy court approved these actions and following the dismissal of the bankruptcy, she closed on her mortgage in December 2006. She used the proceeds from the mortgage to pay her federal tax lien, the lien holder on the house, the judgment listed in her bankruptcy, and several other debts. When she experienced a financial downturn and increased expenses in late 2007, she wrote the mortgagor, asking for assistance. The mortgagor worked with her to resolve the problem. Currently, she is working with the mortgagor on the farm loan and has made contact with a broker to try and sell the farm in a poor real estate market. She has not ignored her debts, rather she has taken action to resolve her issues to the best of her ability. She acted responsibly under the circumstances. I find this potentially mitigating condition applies.

Evidence 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” is potentially mitigating under AG ¶ 20(c). Applicant has not received financial counseling. However, many of the financial issues raised in the SOR have been resolved and her current finances are being managed. She continues to have limited funds because her husband is unable to work regularly for health reasons and because his work has been directly impacted by the economy. She does not use credit cards to finance a life style, but lives within her financial means. Her credit reports support her

statement that she does not use credit to finance an unaffordable lifestyle. This mitigating condition has some applicability.<sup>24</sup>

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant began working with her attorney in 2004 to resolve the financial issues caused by her mother’s health and related financial problems. Upon the recommendation of her attorney, she filed a Chapter 13 bankruptcy to stop the foreclosure on her parents’ house. Two and one-half years after filing her bankruptcy petition, the court dismissed her case after approving a settlement which allowed Applicant to acquire a mortgage. Applicant used the mortgage proceeds to pay debts, including paying \$4,500 to an individual who was resolving credit card debt. Her recent credit reports indicate that the two small credit card debts have a zero balance. The credit reports indicate the accounts were sold or transferred, but the credit reports do not show the debts are held by another creditor. I find that since these debts were listed in her bankruptcy and she paid funds out of her mortgage settlement for resolution of the credit card debts, these debts have been resolved. As Applicant’s credit reports contain many inaccuracies concerning the resolution of debt, this is a reasonable conclusion in light of all the information in the record. This mitigating condition has partial applicability.

Although Applicant denies that she owes the two small debts identified in SOR allegations 1.i and 1.j, she has not formally challenged the validity of these debts with the creditor or the credit reporting companies. Thus, AG ¶ 20(e) does not apply. AG ¶ 20(f) is not applicable in this case.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct::

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.

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<sup>24</sup>Department counsel argues that because Applicant has not received credit counseling, AG ¶ 20(b) cannot be considered a mitigating condition. Applicant has not ignored her debts. She has taken responsibility for the large debt issues and successfully resolved many of these debts. She continues to take responsibility for resolving financial issues within her limited resources. Credit counseling would not necessarily resolve the issues in this case. Moreover, most people receive some credit counseling in connection with bankruptcy. Finally, her experiences resolving her debts has given her a good understanding of budgeting and other financial fundamentals.

AG ¶ 16(a) describes conditions that could raise a security concern and may be disqualifying:

(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.

For this guideline to apply, Applicant's omission must be deliberate. The government established that Applicant omitted material facts from her e-QIP when she answered "no" to Question 27c about the tax lien on her farm, to Question 23 about her misdemeanor traffic offenses and Question 28b about her current financial delinquencies. She answered "yes" to Question 28a, but did not list all her debts. This information is material to the evaluation of Applicant's trustworthiness to hold a security clearance and to her honesty. She strongly denies, however, that she deliberately falsified her answers. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or 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 intent or state of mind at the time the omission occurred.<sup>25</sup> For DC ¶ 16 (a) to apply, the government must establish that Applicant's omission, concealment or falsification in her answers was deliberate and intentional.<sup>26</sup>

Applicant reasonably believed that the traffic citations and arrests were motor vehicle violations and not criminal conduct, a belief held by many other individuals in this country. Applicant admits that she learned about the tax lien on the farm in 2003 and she listed the tax lien on her Chapter 13 bankruptcy petition. This knowledge by itself does not make her "no" answer intentional. She acknowledged her bankruptcy filing and a judgment on her security clearance application. By providing this information, Applicant was not attempting to hide her financial problems from the government. Her disclosure highlights the financial issues as a potential security concern. She, however, did not provide accurate and complete information, which does not equal intentional falsification. There is no evidence in the record which indicates that she decided not to reveal this information. Given that she provided negative information

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<sup>25</sup>See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

<sup>26</sup>Intention is defined as "a determination to act in a certain way" and intentional is defined as "done by intention or design". Merriam-Webster's Collegiate Dictionary (11<sup>th</sup> ed. 2003).

about her finances, her failure to list the other negative financial information was not deliberate and intentional. Guideline E is found in favor of Applicant.<sup>27</sup>

### **Whole Person Concept**

Under the whole person concept, the 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. The 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both good and bad. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is shown. A determination on an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have considered all the facts and evidence in the record, even if not specifically enumerated. Applicant married young and has seven children. Over the last 42 years, she and her husband have struggled financially. Because he worked in the construction industry, his income was directly impacted by economic good times and bad times. Applicant and her husband have not lived extravagantly. They struggled to pay ordinary living expense, such as housing and food for their children. Their life continues to be adversely affected by the economy and their ability to pay their usual living expenses is less than it would be in a strong economy. They do not use credit cards to finance a lavish or extravagant lifestyle. They do not have a car payment, only a mortgage payment. In the last five years, Applicant has worked to resolve several large debts issues. Her employment is steady and

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<sup>27</sup>Even if I were to find the government had established disqualifying condition AG ¶ 16(a), mitigating condition AG 18(f), *the information was unsubstantiated or from a source of questionable reliability* would apply as the allegation of intentional falsification was unsubstantiated.

reliable, unlike her husband's business. However, her income does not provide her with sufficient money to pay all the bills. She still relies on her husband to provide income to meet all the household expenses. Over the last five years, she has established a track record for attacking and resolving her debt issues. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). The fluctuation in her husband's income places challenges on her ability to always keep current on her bills and to meet unexpected expenses. She does not ignore her bills, she pays them as soon as she can.

The credit reports of record reflect that she does not live beyond her financial means. The credit reports and other documentation of debt owed contained inaccurate information about her debt payments and actual debts.<sup>28</sup> A careful review of these records supports Applicant's statements about her use of credit cards. The largest credit card debt listed in the SOR (1.n) and another debt (1.m) are not shown as her personal debts on any credit report. Because these debts are not listed as hers and her attorney considered the debts an estate debt, her testimony that the debt belonged to her mother is credible. She used the credit cards pursuant to the power of attorney her mother had given her. Several smaller debts remain unpaid. These debts cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. While some debts remain unpaid, they are insufficient to raise security concerns. For many years, she and her husband have struggled to provide for their large family. They have never resorted to illegal actions to do so. There is very little likelihood she would do so in the future. I find that overall the positive factors in this case outweigh the negative factors in this case.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial considerations and personal conduct.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

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<sup>28</sup>The other documentation of debt are printouts of information from Lexus-Nexus on judgments and liens. These documents are not the court record, but simply information inputted into a computer by some source. The record does not contain any information which shows that this information is regularly updated. The court record is the most reliable source as to the validity of the judgments and liens and the current status.

Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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MARY E. HENRY  
Administrative Judge