



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-01208
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: *Pro se*

April 17, 2009

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on November 1, 2006 (Government Exhibit 1). On August 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, J and E concerning the Applicant. 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on October 7, 2008, and requested a hearing. Department Counsel was prepared to proceed on October 30, 2008. The case was assigned to another administrative judge on November 3, 2008. I received the case assignment on December 18, 2008. DOHA issued notices of hearing on November 10, 2008, and January 8, 2009. I convened the hearing as scheduled on

February 5, 2009. The Government offered Government Exhibits 1 through 6, which were received without objection. Applicant testified on her own behalf and submitted Applicant's Exhibits A through I, also without objection. The Applicant asked that the record remain open and, on February 23, 2009, she submitted Applicant's Exhibit J, also without objection.¹ DOHA received the transcript of the hearing on February 11, 2009. The record closed on February 23, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 39 and single, though she is in a long-term relationship with the father of her children. She is employed by a defense contractor as a security administrator and seeks to obtain a security clearance in connection with her employment.

Guideline F, Financial Considerations

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she is financially overextended and therefore at risk of having to engage in illegal acts to generate funds.

The Applicant submits that most of these debts occurred during periods of unemployment and underemployment between 1994 and 2004. The Applicant lived in State A until 1994. At that time she and her partner moved to State B, in order to improve their employment prospects, and because she was going to have a baby. They lived in State B until 2001, but their financial situation was always difficult. In 2001, the Applicant moved back to State A, where her partner subsequently joined her. She has lived in State A since that time. (Government Exhibit 5 at 8.)

Since October 2004 the Applicant has been employed by her current employer, first as a temporary employee and, since March 2006, full time. The Applicant states that her intention is to pay all of her past due indebtedness while staying current with her other debts. She further testified that she began to pay her delinquent debts in approximately 2006, when her employer indicated that the Applicant might want to clean up her credit in relation to her job. (Transcript at 104.)

1.a. The Applicant admits that she is indebted to a law firm in the original amount of \$13,137.13 for a judgment based on an eviction. The Applicant's pay is currently being garnished to pay this judgment. The Applicant submitted her payroll records showing that \$10,774.82 had been paid as of February 6, 2009. She testified that she expects this garnishment to end in April 2009. (Government Exhibit 5 at 48-52;

¹Applicant's Exhibit K was received on April 7, 2009. The exhibit consists of documents that, through no fault of the Applicant's, should have been attached to Applicant's Exhibit J. Since the addition of Applicant's Exhibit K is a strictly ministerial act, the date the record closed does not change.

Applicant's Exhibit E, Exhibit F and Exhibit K at 5; Transcript at 35-40.) Because of this garnishment, the Applicant stopped making partial payments on other debts, as further described below. (Transcript at 50-52, 56.)

1.b. The Applicant denied that she currently owed any money for a judgment in the approximate amount of \$1,698.00. She admitted that a judgment was entered against her for that amount based on an eviction, but she stated, "That was paid years ago, before I moved back to [State A]." (Transcript at 40-41.)

1.c. The Applicant denied that she currently owed any money for a judgment in the approximate amount of \$1,512.00. She admitted that a judgment was entered against her for that amount based on an eviction, but she submitted evidence showing that the judgment was satisfied. (Applicant's Exhibit D; Transcript at 43-45.)

1.d. The Applicant admits that she is indebted to a collection agency in the approximate amount of \$271.00. She stated that this was in relation to a failed attempt to obtain insurance from the Automobile Club, and that the debt is not appropriate. However, while she has disputed this debt with the Automobile Club, the Applicant has taken no steps to dispute this debt with the credit reporting agencies. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Transcript at 47-48.)

1.e. The Applicant admits that she is indebted to a collection agency in the approximate amount of \$735.00. She stated that this was in relation to her employment activities at a prior job related to purchasing water for the office, and that the debt should not be her responsibility. However, she has taken no steps to dispute this debt. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Transcript at 48-49.)

1.f., 1.g. and 1.h. The Applicant admits that she is indebted for three different accounts in relation to her cable company. The total indebtedness was originally approximately \$1,030.00. She had been making partial payments on these accounts, until she had to stop because of the garnishment discussed above. The amount she still owes on this debt is unknown. (Transcript at 49-53; Applicant's Exhibit J at 27.)

1.i. The Applicant admits that she is indebted to a collection agency in the amount of \$70.00 for a returned check. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Transcript at 53.)

1.j., 1.k., 1.l. and 1.m. The Applicant admits that she is indebted to a collection agency in the total amount of \$239.00 for four returned checks. The Applicant has made no payments on these debts and has no current plans to make payments on these debts. (Transcript at 53.)

1.n. The Applicant admits that she is indebted to a collection agency in the amount of \$7,195.00 for an automobile loan in connection with a car that was wrecked.

The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Transcript at 53-54.)

1.o. The Applicant admits that she was indebted to a collection agency in the amount of \$592.00. She states that she paid this debt in approximately 2007. She disputed this debt and it was removed from her credit report. (Transcript at 54-56; Applicant's Exhibit I at 3.)

1.p. The Applicant admits that she is indebted to a collection agency in the amount of \$46.00 for a returned check. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Transcript at 57.)

1.q. The Applicant admits that she is indebted to a collection agency in the amount of \$734.00 for a medical bill that has been due and owing since 2001. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Transcript at 57-58.)

1.r. The Applicant admits that she is indebted to a collection agency in the amount of \$1,014.00. The Applicant was making payments on this debt until April 2008, and had reduced the debt to \$814.00. Because of the garnishment, she is not currently making payments. (Transcript at 58-59; Government Exhibit 5 at 46.)

1.s. The Applicant admits that she was indebted to a department store in the amount of \$400.00. She submitted evidence that she had paid the debt in 2002. She disputed this debt and it was removed from her credit report. (Transcript at 58-60; Applicant's Exhibit I at 3 and Exhibit J at 15.)

1.t. The Applicant denied that she was indebted to a law firm in the approximate amount of \$125.00 for a returned check. She submitted evidence that she paid this debt in 2007. She disputed this debt and it was removed from her credit report. (Transcript at 60-61; Applicant's Exhibit J at 14.)

1.u. The Applicant admits that she was indebted to a bank in the approximate amount of \$2,769.00. She states that she was making payments on this debt and had reduced it to approximately \$2,000.00 by April 2008, when she had to stop because of her garnishment. (Transcript at 61-62.)

1.v. The Applicant admits that she was indebted to a collection agency in the amount of \$75.00. She submitted evidence that she had paid this debt. (Transcript at 62-63; Applicant's Exhibit J at 13.)

1.w. The Applicant admits that she is indebted to a collection agency in the approximate amount of \$384.00. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Transcript at 64.)

1.x. and 1.y. The Applicant admits that she was indebted to a collection agency in the amount of \$128.00 for bad checks used to pay for her children's passports. The Applicant testified that she had paid these debts. (Transcript at 64.)

1.z. The Applicant admits that she is indebted to a collection agency in the amount of \$251.00 for a veterinary bill. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Transcript at 64-65.)

1.aa. The Applicant admits that she is indebted to a collection agency in the amount of \$235.00 for a medical bill. She testified that she has a dispute with the medical provider about the debt, but has not disputed the debt with the credit reporting agencies. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Transcript at 64-67.)

1.bb. The Applicant admits that she is indebted to a collection agency in the amount of \$90.00. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Transcript at 67-68.)

1.cc. The Applicant admits that she is indebted to a collection agency in the amount of \$593.00 for a telephone bill. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Transcript at 68.)

1.dd. The Applicant admitted this allegation, but the evidence indicates that it is a duplicate of 1.n. (Transcript at 68.)

1.ee. The Applicant admits that she was indebted to a collection agency in the amount of \$130.00. She testified that, in fact, she did not owe the telephone company anything. She further testified that the debt was disputed to the credit reporting agencies and was removed. (Transcript at 68-70; Applicant's Exhibit I at 6.)

1.ff. The Applicant denied that she was indebted to a collection agency in the approximate amount of \$500.00. She submitted evidence that she paid this debt in 2001. She disputed this debt and it was removed from her credit report. (Transcript at 70; Applicant's Exhibit G and Exhibit I at 6.)

1.gg. The Applicant admits that she was indebted to a collection agency in the amount of \$1,901.00. She testified that, in fact, she did not owe anything because it was not her account. She further testified that the debt was disputed to the credit reporting agencies and was removed. (Transcript at 71; Applicant's Exhibit I at 6.)

1.hh. The Applicant denied that she was indebted to a collection agency in the approximate amount of \$180.00 for a utility bill. She submitted evidence that she paid this debt in 2007. (Transcript at 60-61; Applicant's Exhibit H.)

1.ii. The Applicant admits that she was indebted to a collection agency in the amount of \$443.00. She testified that the debt was disputed to the credit reporting

agencies and was removed. (Transcript at 72-73; Applicant's Exhibit I at 7 and Exhibit J at 12.)

1.jj. and 1.kk. The Applicant admitted the existence of these two debts to a bank in the total amount of \$1,976.00. The Applicant testified that she had paid these debts, disputed them to the credit reporting agencies, and they were removed. (Transcript at 74; Applicant's Exhibit I at 7-8 and Exhibit J at 10.)

1.ii. The Applicant admitted that she was indebted to a collection agency in the amount of \$61.00 for a returned check. She testified that the debt was paid, disputed to the credit reporting agencies, and it was removed. (Transcript at 74-75; Applicant's Exhibit I at 8.)

1.mm. The Applicant admitted that she was indebted to a collection agency in the amount of \$37.00 for a returned check. She testified that the debt was paid, disputed to the credit reporting agencies, and it was removed. (Transcript at 74-75; Applicant's Exhibit I at 8, Exhibit J at 9.)

1.nn. The Applicant admitted that she was indebted to a collection agency in the amount of \$60.00 for a returned check. She testified that the debt was paid, disputed to the credit reporting agencies and it was removed. (Transcript at 75-76.)

1.oo. The Applicant admitted that she was indebted to a collection agency in the amount of \$60.00 for a returned check. She testified that the debt was paid, disputed to the credit reporting agencies and it was removed. (Transcript at 75-76.)

1.pp. The Applicant admitted that she was indebted to a collection agency in the amount of \$58.00 for a returned check. She testified that the debt was paid, disputed to the credit reporting agencies and it was removed. (Transcript at 76-77; Applicant's Exhibit I at 8.)

1.qq. The Applicant admits that she is indebted to a collection agency in the amount of \$80.00 for a medical debt. The Applicant has made no payments on this debt and has no current plans to make payments on this debt. (Transcript at 77.)

1.rr. The Applicant admitted that she was indebted to a collection agency in the amount of \$200.00 for telephone services. She testified that the debt was paid, disputed to the credit reporting agencies and it was removed. (Transcript at 77-78; Applicant's Exhibit I at 10.)

1.ss. The Applicant admitted that she was indebted to a collection agency in the amount of \$64.00 for a returned check. She testified that the debt was paid, disputed to the credit reporting agencies and it was removed. (Transcript at 78; Applicant's Exhibit I at 11.)

1.tt. The Applicant admitted that she was indebted to a collection agency in the amount of \$262.00. She testified that the debt was paid, disputed to the credit reporting agencies and it was removed. (Transcript at 78-79; Applicant's Exhibit I at 11.)

1.uu. The Applicant admitted that she was indebted to a collection agency in the amount of \$1,221.00. She testified that the debt was paid, disputed to the credit reporting agencies and it was removed. (Transcript at 78-80; Applicant's Exhibit I at 11 and Exhibit J at 8.)

1.vv. The Applicant denied owing a collection agency \$3,502.00 for a past due account to a bank. She submitted evidence that a settlement had been made on this account and she had paid this debt in 2007. (Transcript at 80-81; Government Exhibit 5 at 22.)

1.ww., 1.xx and 1.yy. The Applicant admits owing her current employer's dining facility \$454.00 for three returned checks that she cashed in 2004. She submitted evidence showing she has paid approximately \$221.00 towards this delinquency. (Transcript at 81-82; Applicant's Exhibit J at 6-7.)

1.zz. The Applicant testified and provided evidence to show that her disposable income has dropped a considerable amount since April 2008. The garnishment discussed in 1.a., above, began in April 2008 and takes over \$600.00 per month. In addition, her partner was unemployed for a considerable period in 2008, and only in October 2008 did he begin working again. She submitted a financial statement showing that her disposable income was \$81.42 per month as of February 2009. (Transcript at 81-88; Applicant's Exhibit K at 4.)

1.aaa. and 3.g. The Applicant admitted that she had written numerous over the years knowing that she did not have the funds to cover them. This conduct began in State B in the 1990s, but continued after she returned to State A, as set forth under 1.ww., 1.xx and 1.yy., above.

In discussing her conduct, the Applicant stated:

Yes. I did write checks deliberately. I mean, this was during the time frame that I had moved to [State B]. I had a small - - my oldest was very young. I mean, I was - - I left pregnant and - - and we - - I left and there was some Unemployment, not very much, maybe 250, if not less than that, a week and - - 'cause I was a part-time student or part-time employee and a full-time student and - - and my domestic partner, my child's father, did not have a job at the time when we left and he was also unemployed. So in order to my way of - - I was just wanting to make ends meet and buy diapers for my child, food for my child and, you know - - so I knew there was no funds there or not enough and I would write 'em out to either supermarkets - - basically, most of these were supermarkets of all - - you know, throughout [City] really, I mean, just buying what I

needed as food and necessities for me and my children, so on, so - -
(Transcript at 90-91.)

As a result of her history of bad check writing, the Applicant was placed on a Bad Check Program in State B. She stated that, for about a year, she had to make payments and restitution to the victims. (Transcript at 91; Government Exhibit 5 at 8.) The Applicant further testified that the three bad checks she wrote to her employer in 2004 were the last ones that she has written. (Transcript at 92-93.)

1.bbb., 1.ccc. and 1.ddd. These three allegations will be discussed under Paragraph 2, below.

Guideline J, Criminal Conduct

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has engaged in criminal conduct. The Applicant admits all of the allegations under this paragraph of the SOR.

2.a., 1.bbb. and 3.h. The Applicant moved to State B in early 1996. Due to having a vehicle repossessed for non-payment, the Applicant did not have a vehicle. She testified:

I rented a mini-van and I was making payments, it was coming out of our credit card, but I - - I no longer had funds or the availability to continue paying it. So, at that time, I kept the van for maybe over 30 days and that's - - and it wasn't returned, so that's why it was considered a felony larceny, I guess. (Transcript at 94.)

She was eventually arrested for this offense and required to pay restitution to the rental car company. The amount she paid was approximately \$10,000.00. (Transcript at 94-95.)

2.b., 1.ccc. and 3.i. The Applicant, also in 1996, used an intermediary to open a bank account in the other person's name. The Applicant would knowingly write bad checks on this account and withdraw money from ATM machines knowing there was insufficient money in the account.

The Applicant was eventually arrested and charged with four counts of Forgery and one of Fraud, all felonies. She plead guilty and was sentenced to two years probation, six months of financial counseling and paid restitution of at least \$3,000.00. Her probation was terminated early and the charge reduced to a misdemeanor. (Transcript at 95-96; Government Exhibit 5 at 10, 16-17.)

2.c., 1.ddd. and 3.j. The Applicant was arrested in 2003 for misdemeanor theft. In this incident, she used a procurement card provided by her employer to buy personal items. She plead guilty and sentenced to three years informal probation, pay restitution

of approximately \$300.00 and fined. (Transcript at 96-97; Government Exhibit 5 at 17-18.)

2.d. This subparagraph states that the incidents described in subparagraphs 3.a. through 3.f., below, amount to criminal conduct. Specifically, that they are cognizable under 18 U.S.C. §1001.

Guideline E - Personal Conduct

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has engaged in conduct which shows questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. The Applicant admitted allegations 3.d., 3.e., 3.f., 3.g., 3.h., 3.i., and 3.j. Those admissions are deemed findings of fact.

3.a. The Applicant filled out her Electronic Questionnaire for Investigations Purposes (e-QIP) on November 1, 2006. (Government Exhibit 1.) Question 27.d. asks whether, in the last seven years, she had any judgments against her which had not been paid. The Applicant admitted the judgement set forth in subparagraph 1.c. She did not admit the three other judgments set forth in subparagraphs 1.a., 1.b., and 1.dd. This was a false answer to a relevant question regarding the Applicant's financial situation. The Applicant had no good response as to why she did not admit these additional judgments. Her main argument was that she knew the Government would pull a credit report on her and then she would answer questions. (Transcript at 97-101.)

3.b. Question 27.d.2. of Government Exhibit 1 asks the Applicant to provide details for the judgment set forth in subparagraph 1.c. The Applicant stated that the judgment had been paid. Applicant's Exhibit D seems to indicate that the judgment was paid in 2008. The Applicant testified that, in reality, this judgment was paid before 2006, but she did not request a letter about it until 2008. That argument, under the circumstances of this case, is credible and worthy of belief. (Transcript at 101-103.) This subparagraph is found for the Applicant.

3.c. Question 28.a. of Government Exhibit 1 asks the Applicant whether, within the last seven years, she had been more than 180 days delinquent on any debts. She stated, "Yes," and discussed a vehicle loan that had been brought current. She did not state any of the numerous delinquent debts described under Paragraph 1, above. This answer was, therefore, false. The Applicant stated that she did not have a copy of her credit report, and did not know what kind of debts were on there. (Transcript at 103-104.)

3.d. Question 28.b. of Government Exhibit 1 asks the Applicant whether she was currently more than 90 days delinquent on any of her debts. She did not state any of the numerous delinquent debts described under Paragraph 1, above. This answer was, therefore, false. (Transcript at 104-105.)

3.e. Question 23.a. of Government Exhibit 1 asks the Applicant whether she had ever been charged with any felony offense. She answered, No.” This answer was false because the Applicant had been charged and convicted of felonies as set forth in subparagraphs 2.a. and 2.b. She testified that she had been advised by another person in the security department to only go back seven years on her questionnaire. (Transcript at 105-106.)

3.f. In 2003, as stated above under subparagraph 2.c., the Applicant misused a procurement card from her employer. She subsequently was laid off from the job. In her questionnaire, Government Exhibit 1, at question 22, concerning this employment, she states that she, “Left a job by mutual agreement following allegations of misconduct.”

The Applicant filled out interrogatories in 2008. The Applicant described the same incident as follows at question 11, “Due to the incident [at] [place of employment] I wasn’t fired, it was due to the budget crisis in [State A]. If I had been fired I wouldn’t have been able to collect unemployment. Unemployment benefits were collected for 1 year.” (Government Exhibit 5 at 6.)

The Applicant testified at length about this incident. (Transcript at 106-111.) Based on my analysis of all the available evidence, I find that the Applicant did not intend to deceive the Government as to why she was dismissed from this job. Her answer on Government Exhibit 1 put the Government on notice that this was an area that needed investigation. This subparagraph is found for the Applicant.

Mitigation

The Applicant’s supervisor submitted a letter on her behalf. The supervisor states, “I have found [the Applicant] to be intelligent, capable, dedicated, and personable woman.” (Applicant’s Exhibit A.)

The Applicant submitted her job evaluations. They show that she “Consistently Meets Expectations.” (Applicant’s Exhibit B and Exhibit C.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an Applicant’s suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge’s over-arching

adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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.

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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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. The Applicant, by her own admission, had over \$44,512.13 in past due debts, all of which have been due and owing for several years. 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." Applicant's financial difficulties arose primarily between about 1994 and 2004. However, she only began paying the debts in 2006, and only when her employer suggested that she do so. While she has made strides in paying her indebtedness, the fact that she had so many bad debts, for so long, and did nothing to pay them until a little over two years ago, is still troubling. This mitigating condition is not applicable to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn . . .), and the individual acted responsibly under the circumstances." The Applicant argues that many of these debts came from unemployment or underemployment. However, there is evidence that she willfully ignored her responsibilities and, as described in subparagraphs 1.bbb., 1.ccc. and 1.ddd., was not afraid to act criminally if she felt it necessary. I cannot find, under these particular facts, that the Applicant has acted responsibly under the circumstances.

The Applicant has initiated a good-faith effort to pay off her creditors. The evidence shows that she has paid off approximately \$27,149.52 of her indebtedness to 26 creditors. She continues to owe approximately \$17,362.31, to 18 creditors. AG ¶ 20(d) is arguably applicable.

AG ¶ 20(c) states that it may be mitigating where, "there are clear indications that the problem is being resolved or is under control." The Applicant last act of passing a bad check occurred in 2004. Her past due indebtedness appears to all predate 2004. She is slowly paying her past due indebtedness. This mitigating condition is arguably applicable.

I have weighed the Applicant's conduct prior to 2004 against her actions in paying many of her accounts in the last two years. In addition, I have looked at the circumstances in which she allowed this conduct to occur, particularly writing bad

checks, opening a bank account under a false name and stealing a car because she felt she needed to for her child. The record evidence shows little remorse or understanding on the part of the Applicant about why her conduct was inappropriate. While she is paying her debts off, and is to be commended for that, I find that it is still too soon, given the other circumstances of this case, to find that this conduct may not recur in the future. Paragraph 1 is found against the Applicant.

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubts 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.

The Applicant was involved in several criminal incidents over the years. What is striking about them is that they all related to financial crimes. AG ¶ 31(a) applies to this case, stating that a disqualifying condition is "a single serious crime or multiple lesser offenses."

AG ¶ 33.(a) stated that it may be mitigating where, "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." The last criminal incident occurred in 2003, when she misused an employer's procurement card. However, repeatedly the Applicant has shown a proclivity towards illegal acts when pressured financially. I see little indication that her personality has changed to the point that she would avoid such conduct again. This mitigating condition is not applicable.

I find little, if any, remorse or understanding of what she did, and why it is wrong. AG ¶ 33.(d) is not currently applicable. Under the particular circumstances of this case, at this point in time, using the clearly consistent standard, I must find this paragraph against the Applicant.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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.

AG ¶ 16(a) states that it may be disqualifying where an Applicant engages in the “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.”

The Applicant’s e-QIP is riddled with false and misleading answers. She argues that it was either the result of her taking bad advice (that she only had to go back seven years on her questionnaire) or that she did not have all the information (not telling the Government that she had over 30 bad debts). The Applicant works in the security department, and knew or should have known that her answers were, at the very least, misleading. Under other circumstances, the Applicant’s false answers could have been seen as mistakes. However, the Applicant has little credibility. As shown above, she is not adverse to using fraud or theft to her advantage. None of the mitigating conditions apply. Based on the record, I find the Applicant intentionally falsified her answers as set forth in subparagraphs 3.a., 3.c., 3.d., and 3.e.

Subparagraphs 3.g., 3.h., 3.i., and 3.j., state that conduct of the Applicant which is specifically discussed under Paragraphs 1 and 2, above, are also cognizable under this paragraph. The personal conduct described here is sufficient to justify denial of security clearance under this paragraph as well. AG ¶ 16.(c) applies:

Credible 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.

Based on all of the information set forth above, Paragraph 3 is found against the Applicant.

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) 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Under AG ¶ 2(a)(3), all of the Applicant's conduct, financial, criminal, and personal, is frequent and relatively recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)), or that the likelihood of recurrence is close to nil (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and/or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from her Financial Considerations, Criminal Conduct and Personal Conduct.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2 and 3 of the Government's Statement of Reasons.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST THE APPLICANT
Subparagraph 1.a.:	Against the Applicant
Subparagraph 1.b.:	For the Applicant
Subparagraph 1.c.:	For the Applicant
Subparagraph 1.d.:	Against the Applicant
Subparagraph 1.e.:	Against the Applicant
Subparagraph 1.f.:	Against the Applicant
Subparagraph 1.g.:	Against the Applicant
Subparagraph 1.h.:	Against the Applicant
Subparagraph 1.i.:	Against the Applicant
Subparagraph 1.j.:	Against the Applicant
Subparagraph 1.k.:	Against the Applicant
Subparagraph 1.l.:	Against the Applicant
Subparagraph 1.m.:	Against the Applicant
Subparagraph 1.n.:	Against the Applicant
Subparagraph 1.o.:	For the Applicant
Subparagraph 1.p.:	Against the Applicant
Subparagraph 1.q.:	Against the Applicant

Subparagraph 1.r.:	Against the Applicant
Subparagraph 1.s.:	For the Applicant
Subparagraph 1.t.:	For the Applicant
Subparagraph 1.u.:	Against the Applicant
Subparagraph 1.v.:	For the Applicant
Subparagraph 1.w.:	Against the Applicant
Subparagraph 1.x.:	For the Applicant
Subparagraph 1.y.:	For the Applicant
Subparagraph 1.z.:	Against the Applicant
Subparagraph 1.aa.:	Against the Applicant
Subparagraph 1.bb.:	Against the Applicant
Subparagraph 1.cc.:	Against the Applicant
Subparagraph 1.dd.:	For the Applicant
Subparagraph 1.ee.:	For the Applicant
Subparagraph 1.ff.:	For the Applicant
Subparagraph 1.gg.:	For the Applicant
Subparagraph 1.hh.:	For the Applicant
Subparagraph 1.ii.:	For the Applicant
Subparagraph 1.jj.:	For the Applicant
Subparagraph 1.kk.:	For the Applicant
Subparagraph 1.ll.:	For the Applicant
Subparagraph 1.mm.:	For the Applicant
Subparagraph 1.nn.:	For the Applicant
Subparagraph 1.oo.:	For the Applicant
Subparagraph 1.pp.:	For the Applicant
Subparagraph 1.qq.:	Against the Applicant
Subparagraph 1.rr.:	For the Applicant
Subparagraph 1.ss.:	For the Applicant
Subparagraph 1.tt.:	For the Applicant
Subparagraph 1.uu.:	For the Applicant
Subparagraph 1.vv.:	For the Applicant
Subparagraph 1.ww.:	Against the Applicant
Subparagraph 1.xx.:	Against the Applicant
Subparagraph 1.yy.:	Against the Applicant
Subparagraph 1.zz.:	Against the Applicant
Subparagraph 1.aaa.:	Against the Applicant
Subparagraph 1.bbb.:	Against the Applicant
Subparagraph 1.ccc.:	Against the Applicant
Subparagraph 1.ddd.:	Against the Applicant

Paragraph 2, Guideline J:

AGAINST THE APPLICANT

Subparagraph 2.a.:	Against the Applicant
Subparagraph 2.b.:	Against the Applicant
Subparagraph 2.c.:	Against the Applicant
Subparagraph 2.d.:	Against the Applicant

Paragraph 3, Guideline E:	AGAINST THE APPLICANT
Subparagraph 3.a.:	Against the Applicant
Subparagraph 3.b.:	For the Applicant
Subparagraph 3.c.:	Against the Applicant
Subparagraph 3.d.:	Against the Applicant
Subparagraph 3.e.:	Against the Applicant
Subparagraph 3.f.:	For the Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge