DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-03822
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

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

March 4, 2009

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Applicant refuted the allegations under Guideline E, but she did not mitigate the security concerns under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on February 23, 2007. On September 19, 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 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

Applicant answered the SOR on October 11, 2008, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 24, 2008, and the case was assigned an administrative judge on the same day. DOHA issued a notice of hearing on December 15, 2008, scheduling the hearing for 9:00 a.m. on January 14, 2009. Applicant arrived for the hearing at about 11:20 a.m., because she mistakenly thought the hearing was scheduled for the following day until she was contacted about her failure to appear at 9:00 a.m. The administrative judge continued the case until a date to be determined.[1]

The case was reassigned to me on January 21, 2009. DOHA issued an amended notice of hearing on January 23, 2009, scheduling the hearing for February 2, 2009. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 14 were admitted in evidence without objection. Applicant testified on her own behalf and submitted Applicant's Exhibits (AX) A through G, which were admitted without objection. I granted Applicant's request to keep the record open until February 20, 2009, to enable her to submit additional documentary evidence. She timely submitted AX H through P, which were admitted without objection (Hearing Exhibit I). DOHA received transcript (Tr.) on February 13, 2009. The record closed on February 20, 2009.

Procedural and Evidentiary Rulings

Hearing Notice

Applicant was given the required 15-day notice for the hearing originally scheduled for January 14, 2009; however, the amended notice of hearing was issued less than 15 days before the hearing on February 2, 2009. The parties agreed that the February 2 hearing was a continuation of the January 14 hearing, and Applicant agreed continue the proceedings on February 2, 2009 (Tr. 20-21).

Uncharged Misconduct

Applicant objected to evidence that she failed to disclose an unsatisfied judgment when she executed an application for sensitive positions (SF 85P) in 1994, asserting that it was irrelevant and unfair (Tr. 83, 89). Department counsel had informed Applicant of his intention to offer the SF 85P and a credit report reflecting an unpaid judgment (GX 13).

Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or in the whole person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I overruled Applicant's objection and admitted the SF 85P and credit report for the limited purposes of considering whether Applicant had a pattern of delinquent debts as early as

[1] A one-page transcript of this hearing was prepared, but it will not be referenced in this decision.

1994 and whether she had a pattern of concealing debts on her security clearance applications (Tr. 84-85, 88).

Findings of Fact

In her answer to the SOR, Applicant admitted all the allegations in SOR with explanations. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 39-year-old data base administrator employed by a defense contractor. She has worked for her current employer since September 2004. Two colleagues describe her as dependable, dedicated, security conscious, and loyal (AX G). One of her colleagues has worked with her at their church for two years and noted her commitment and devotion to her family (AX G at 1).

Applicant served on active duty in the U.S. Army from February 1988 to February 1996. While in the Army, she worked as an information systems analyst (Tr. 10). She received a top secret clearance in February 1988, but she does not currently hold a clearance (Tr. 9-10).

Applicant was married in August 1990 and divorced in July 1992. She remarried her former spouse in February 2004. She has four children, ages 20, 16, 14, and 7.

Applicant has an associate's degree in information technology, a bachelor's degree in organizational management, and is currently working on her master's degree. She testified she is about 12 credits and one year away from obtaining her master's degree (Tr. 9).

On April 6, 2001, Applicant filed a petition for Chapter 13 bankruptcy solely in her name, listing liabilities of about $116,309 and assets of $82,950. The debts listed in her bankruptcy petition included numerous delinquent credit card accounts, a deficiency from a car repossession, and student loans. Her assets included a house and lot worth $55,000 and a time share in a vacation resort worth $13,000. Her case was dismissed on February 8, 2002 for failure to make payments (GX 4).

When Applicant filed her bankruptcy petition, she was the mother of three children and pregnant with twins. Her doctor prescribed bed rest in late June 2001. She did not return to work until after the babies were delivered in December 2001. One of the twins died shortly after birth. Her income stopped in June 2001 and she was unable to make the payments required by the bankruptcy court. She had not worked for her employer long enough to have any benefits (Tr. 36-37).

In 2002, Applicant moved to another location and was unemployed until March 2003, when she found part-time employment at a bank (Tr. 37). She and her former spouse reconciled. Her former spouse had serious financial problems, with outstanding

student loans, a deficiency from a car repossession, and delinquent credit cards. They remarried in February 2004.

March 26, 2004, Applicant and her spouse filed a petition for Chapter 13 bankruptcy, listing liabilities of about $102,656 and assets of $68,213. Applicant testified that most of the delinquent debts were her husband's, but his bankruptcy lawyer advised that they file a joint bankruptcy so that it would not appear that her husband was hiding assets (Tr. 38-39). The case was dismissed on July 22, 2004, for failure to commence payments (Tr. 37-39; GX 5).

On August 6, 2004, Applicant and her spouse filed a petition for Chapter 13 bankruptcy, listing liabilities of about $116,283 and assets of $68,053. The case was dismissed on January 5, 2005 for failure to appear at the creditor's meeting and failure to make payments (GX 6).

On March 31, 2005, Applicant filed a petition for Chapter 13 bankruptcy solely in her name, listing liabilities of about $101,812 and assets of $61,250. On September 15, 2005, the case was dismissed for failure to make payments (GX 7). Applicant testified she did not make the payments because she was unable to work for a substantial period of time as a result of a highly contagious infection (Tr. 41). Her testimony was corroborated by medical records reflecting treatment from July 2005 to July 2006 (AX C).

On October 14, 2005, Applicant again filed a petition for Chapter 13 bankruptcy solely in her name, listing liabilities of about $109,712 and assets of $66,050. The case was dismissed with prejudice on February 21, 2006, for failure to commence payments. She was prohibited from refilling within 180 days (GX 8). Applicant testified she was still suffering from the infection and unable to work. The tenants in her rental property refused to pay rent once they learned about her bankruptcy, and the house was in danger of being foreclosed.

On April 27, 2006, Applicant again filed a petition for Chapter 13 bankruptcy solely in her name, in an effort to prevent foreclosure on her rental property (Tr. 43). Unlike her previous petitions, where she was represented by a bankruptcy attorney, she filed this petition *pro* se. On May 18, 2006, the case was dismissed based on the prior dismissal with prejudice (GX 9).

In August 2006, Applicant's elderly mother moved in with them. In November 2006, her brother suffered a stroke and also moved in with them (Tr. 41-43, 57). In September 2007, Applicant completed a monthly cash flow worksheet tracking her expenses for four weeks. There is a notation at the bottom of the worksheet, "Not enough income!!" Loan consolidation and Chapter 7 bankruptcy are handwritten on the worksheet as options (AX N).

On January 4, 2008, Applicant filed a petition for Chapter 7 bankruptcy solely in her name, listing liabilities of about $138,607 and assets of $19,476. By this time, the

rental home had been foreclosed and a car repossessed (Tr. 44). Her debts were discharged on April 21, 2008 (GX 10). Before filing the petition, Applicant was contributing about $335 per month to her 401k retirement account (Tr. 48). The debts discharged included a judgment on a delinquent car loan for $13,000 and a $1,000 personal loan, a $6,000 debt for furniture, a number of overdrawn checks, payday loans, and start-up costs and operating expenses for a telemarketing business Applicant operated from her home (Tr. 51-55). She and her spouse also incurred about $15,000 in landscaping expenses for the house they were renting, because they hoped to buy the house. Their low credit scores prevented them from being able to buy the house (Tr. 54).

Applicant currently has two credit cards with small balances, which she pays off every month. Her spouse has none (Tr. 45-46). She has a 12-year-old car that is paid for, and her spouse has a five-year-old car on which he is making payments (Tr. 47). After the Chapter 7 bankruptcy, Applicant and her spouse have kept their accounts separate, except for the rent and utilities, which they share (Tr. 47).

In addition to the mandatory counseling required by the bankruptcy court, Applicant has received financial counseling from her credit union (Tr. 50). She completed a three-day debt management course in April 2007 (AX P). She is keeping a budget that was designed by her credit union that reflects a net monthly remainder of about $378 for spending and savings (Tr. 50; AX L at 3). Among other items, the budget includes two $20,000 student loans, on one of which she has budgeted payments of $50 per month. The other student loan is in a deferred status (AX P at 3).

Applicant and her spouse have moved into a smaller house, reducing their monthly rent from $1,750 to $1,350 (Tr. 65; AX L at 1). The now have only one cell phone, and they have reduced their cable service (Tr. 65). Applicant's credit union statement for the month of January 2009 reflects a balance of $15.14 in one share account, a balance of $2,505.11 in a second share account, a zero balance in her "quick cash loan" account, and an end-of-month balance of $721.28 in her checking account (AX O). As of August 2008, she was earning $24.36 per hour. She had earned $49,880 in the previous year (AX D). Her credit reports for January 2009 reflect that she is current on all obligations (AX E and F).

When Applicant submitted her SF 86 in February 2007, she answered "yes" to question 27a, asking if she had filed for bankruptcy during the past seven years. The computer printout of the data entries on her SF 86 reflects the bankruptcy petition filed in March 2004 (GX 5), but it does not reflect her other bankruptcy petitions (GX 1 at 9). She answered "no" to questions 23a through 23f, asking about her police record. The computer printout of her SF 86 does not reflect her arrest in February 2001 for driving under a suspended license and resisting arrest, nor does it reflect that she was charged with passing a fraudulent check in March 2003 (GX 1 at 8; AX B). Applicant testified that when she asked her security office why some of the information was not listed in the electronic printout of her SF 86, one of the security specialists told her the disk was corrupted (Tr. 74).

At the hearing, Applicant insisted she disclosed all her bankruptcies when she submitted her SF 86 (Tr. 66). After the hearing, she produced an EPSQ SF 86 worksheet on which she answered "yes" to the bankruptcy question and listed the filing date as "2001/04/06." This entry could indicate bankruptcies filed in 2001, 2004, and 2006; however, it appears to reflect the precise date of her first Chapter 13 bankruptcy petition, which was filed on April 6, 2001.

Applicant also listed the details of the two bankruptcy filings in 2004 under the general remarks section of her worksheet (AX M at 27-28). She did not list her petitions filed in 2005 or 2006. The 2004 filings were at the very bottom of the last page of the worksheet, suggesting the possibility of a continuation sheet, but no continuation sheet was included in her post-hearing submission. In the general remarks section (AX M at 28), she commented, "I have experienced some financial struggles in the past but have obtained better employment." Her Chapter 7 bankruptcy was filed after she submitted her SF 86.

Applicant listed the bad check offense on her worksheet under the question about other offenses not covered elsewhere (AX M at 24). The conviction of driving with a suspended license and the charge of resisting arrest are also listed on the worksheet (AX M at 23). She testified that when she gave the worksheet to her security officer, he told her not to list the conviction of resisting arrest because it was a traffic offense related to charge of driving under a suspended license (Tr. 68-71).

In November 2008, Department Counsel sent Applicant a blank SF 86 and informed her he intended to present it at the hearing (GX 14). At the hearing, she submitted a SF 86 bearing her signature and dated December 13, 2008 (AX A). She testified it was "the one from 2006," but it appears to have been filled out after she received the blank SF 86 from Department Counsel (Tr. 30). On this SF 86, she answered "yes" to the question whether she had ever been charged with or convicted of a felony, even though all the offenses on her criminal record are misdemeanors (AX A at 7; AX B). She also answered "yes" to the questions regarding bankruptcies, garnishments, repossessions and debts more than 180 days delinquent (AX A at 8-9). She also testified that AX A did not include the "back sheet" listing all her bankruptcies.

In rebuttal, Department Counsel presented a SF 85P certified by Applicant on January 29, 1994 and recertified on February 15, 1994, on which she answered "no" to the question, "In the last 5 years, have you, or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had legal judgment rendered against you for a debt?" She also answered "no" to a question asking if she was over 180 days delinquent on any loan or financial obligation (GX 11 at 9). Department counsel presented a credit report dated April 6, 1994, reflecting an unpaid judgment for a telephone bill for $795 that was entered against Applicant in June 1990 (GX 12 at 2).

Applicant testified she did not know a judgment had been entered against her when she completed the 1994 application (Tr. 80). She stated she did not know why she did not disclose the delinquent telephone bill on her 1994 application (Tr. 80-81).

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 SOR alleges between April 2001 and April 2006, Applicant filed four Chapter 13 bankruptcy petitions that were dismissed for non-payment (SOR ¶¶ 1.a, 1.b, 1.d, and 1.e), one petition that was dismissed for non-payment and failure to appear at the creditor's meeting (SOR ¶ 1.c), and one petition that was dismissed because it was filed within 180 days of an earlier dismissal (SOR ¶ 1.f). It also alleges she filed a Chapter 7 bankruptcy in January 2008 and received a discharge in April 2008 (SOR ¶ 1.g).

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 establishes all these disqualifying conditions, shifting the burden to her 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. 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." Applicant's debts were recent, numerous, and did not occur "under such circumstances that [they are] unlikely to recur." Furthermore, her financial history casts doubt on her good judgment. Thus, I conclude AG ¶ 20(a) is not established.

Security concerns under this guideline also can be mitigated by showing that "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." AG ¶ 20(b). Both prongs, i.e., conditions beyond the person's control and responsible conduct, must be established. Applicant has encountered several conditions beyond her control. She was divorced in 1992. When she reconciled with her husband and they were remarried, her husband brought considerable debt to the marriage. She was incapacitated from June to December 2001 while awaiting the birth of twins. She suffered from a highly contagious infection from July 2005 to July 2006. She became responsible for an elderly mother and disabled brother in late 2006. Her telemarketing business failed in 2007. However, she did not act responsibly. She spent beyond her means, incurred irresponsible expenses such as an expensive landscaping for a home that they did not own, obtained expensive payday loans, and failed to attend the creditor's meeting required by the bankruptcy court on one occasion. I conclude AG ¶ 20(b) is not established.

Security concerns under this guideline also can be mitigated by showing that "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control." AG ¶ 20(c). Applicant completed a debt management course, received financial counseling through her credit union, adopted a reasonable budget, and is current on her obligations. Her financial situation is precarious, but it is under control. I conclude AG ¶ 20(c) is established.

Security concerns under this guideline also can be mitigated by showing that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." AG ¶ 20(d). Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Bankruptcy is a legitimate means of resolving excessive indebtedness, but it does in itself not establish a good faith effort. It is appropriate to consider the actions that led to the delinquent debts and Applicant's

failure to address them before resorting to bankruptcy. ISCR Case No. 01-26675 at 3 (App. Bd. Jun.13, 2003). Applicant presented no evidence of actions to resolve her debts before resorting to bankruptcy. I conclude AG ¶ 20(d) is not established.

Even though the mitigating condition in AG ¶ 20(c) applies, I conclude the security concerns based on financial considerations are not mitigated because this one mitigating factor is outweighed by Applicant's extensive track record of delinquent debts and bankruptcy filings.

Guideline E, Personal Conduct

The SOR alleges Applicant falsified her SF 86 by disclosing only one of her bankruptcy filings (SOR ¶ 2.a), and by not disclosing a misdemeanor arrest and conviction in February 2001 and a misdemeanor bad check charge in March 2003 (SOR ¶ 2.b). 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 set out in AG ¶ 16(a) as follows:

> 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.

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).

The government's evidence is a computer printout of the data extracted from Applicant's SF 86. Applicant's certification is attached to the computer printout, not the original questionnaire. Whether Applicant carefully reviewed her application before it was submitted is unclear. She appears, however, to have difficulty with the printed word, as evidenced by her misreading of the original hearing notice in this case and her admission of a felony arrest on the blank SF 86 sent to her by Department Counsel. To corroborate her testimony that she disclosed all her bankruptcies, she produced her

handwritten EPSQ SF 86 worksheet that listed three bankruptcies instead of the single bankruptcy reflected on the computer printout of the data entries on her SF 86. The worksheet appears genuine and there is no evidence suggesting it was fabricated. Applicant repeatedly testified about a "back page" of her application listing all her bankruptcy petitions. I am satisfied that she disclosed her multiple bankruptcies as best she could, but somewhere in the process some of the information was lost.

Applicant's EPSQ SF 86 worksheet also disclosed her two misdemeanor arrests in February 2001 and March 2003. She received bad advice from her security officer when he told her the February 2001 charge of resisting arrest was a traffic offense that was not covered by the questionnaire. She characterized one of her offenses as more serious than it was, listing it as a felony.

Applicant's testimony on the falsification issue was candid, plausible, and credible. She appeared baffled by the accusation that she falsified her application, and her worksheet corroborates her insistence that the computer printout omitted information from her SF 86. I am satisfied she did not intentionally falsify her SF 86, and I conclude AG ¶ 16(a) is refuted by the evidence.[2] No other disqualifying conditions under this guideline are raised.

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 Guideline F and E in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

[2] Even if I had concluded that AG ¶ 16(a) was not refuted, I would have resolved the personal conduct concerns in Applicant's favor, based on the mitigating conditions in AG ¶ 17(b) ("omission or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel") and AG ¶ 17(f) ("the information was unsubstantiated").

Applicant is an intelligent, well-educated adult. She was candid, sincere, and credible at the hearing. Her expertise is in data base management, not financial management, and she is unfamiliar with the arcane world of security clearance determinations. She has been dealing with delinquent debts for most of her adult life, beginning while she was on active duty in the Army.

Applicant has made a number of good decisions during the past year. She started tracking her spending habits, obtained a Chapter 7 bankruptcy discharge, separated her finances from her husband's, obtained financial counseling, and adopted a reasonable budget. She has a good income and is living modestly. What is missing is a track record of financial responsibility long enough to demonstrate that she will not fall back into old habits. Less than a year has passed since her bankruptcy discharge. More time is needed for her to demonstrate that she is willing and able to be financially responsible.

After weighing the disqualifying and mitigating conditions under Guideline F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has refuted the allegations of falsification under Guideline E, but she has not mitigated the security concerns under Guideline F. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant 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.g:	Against Applicant
Paragraph 2, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

Conclusion

In light of all of the circumstances, 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.

LeRoy F. Foreman
Administrative Judge