



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-07990  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel  
Richard Stevens, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 31, 2009

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) listed 21 debts totaling about \$41,300. She paid seven debts, totaling about \$2,900. One debt was disputed. She has established payment plans for resolving her remaining SOR debts. Financial consideration concerns are mitigated. Personal conduct concerns are mitigated because she did not intentionally fail to list some of her delinquent debts on her security clearance application. Eligibility for access to classified information is granted.

**Statement of the Case**

On January 3, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF-86) (Government Exhibit (GE) 1). On November 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued an SOR (GE 12) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The revised adjudicative guidelines (AG) promulgated

by the President on December 29, 2005, are effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR alleged security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

On December 8, 2008, Applicant responded to the SOR (GE 13). In February 2009, Applicant's case was referred to an administrative judge. On February 18, 2009 and March 5, 2009, DOHA issued hearing notices (GE 8, 9). The hearing was cancelled after Applicant's sponsor terminated her employment and sponsorship.

In May 2009, a government contractor sponsored Applicant for a security clearance. On June 10, 2009, DOHA assigned the case to me. On June 18, 2009, and June 25, 2009, DOHA issued hearing notices (GE 10, 11). On July 9, 2009, Applicant's hearing was held. At the hearing, Department Counsel offered seven exhibits (GE 1-7) (Transcript (Tr.) 21-22), and Applicant offered four exhibits (Tr. 23-26; AE A-D). There were no objections, and I admitted GE 1-7 (Tr. 22), and AE A-D (Tr. 23-26). Additionally, I admitted four Notices of Hearings, the SOR,<sup>1</sup> and her response to the SOR (GE 8-13). After the hearing, Applicant provided six exhibits (AE E-J). I received the transcript on July 17, 2009. On July 20, 2009, Department Counsel did not object, and that same day I admitted Applicant's six exhibits (AE E-J).

### **Findings of Fact<sup>2</sup>**

In Applicant's SOR response, she admitted she owed and had not paid the debts in SOR ¶¶ 1.a, 1.c, 1.e, 1.f, 1.n, 1.o, 1.t, and 1.u (GE 13). She said these eight debts were in a payment plan or a debt consolidation plan (GE 13). She denied the other debts because they were either duplications, had inaccurate amounts, or were paid (GE 13). Her admissions are accepted as findings of fact.

Applicant is 28 years old and is seeking employment by a defense contractor (Tr. 6, 27). She graduated from high school in 1998 (Tr. 7). She completed three years of college, where she majored in psychology (Tr. 7). She previously held a top secret clearance with access to sensitive compartmented information when she was on active duty in the U.S. Army (Tr. 8). She was on active duty in the Army from June 25, 1998 to January 23, 2006 (Tr. 9). Her military occupational specialty was administrative

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<sup>1</sup> At Department Counsel's request, I amended SOR ¶ 2(a) at the hearing to correct a typographical error (Tr. 18). The SOR and response to SOR are the pleadings in the case. The hearing notices, SOR and response to SOR are admitted and given exhibit numbers for ease of reference in this decision.

<sup>2</sup>Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

assistant (Tr. 29-30). She was a sergeant promotable to staff sergeant when she was discharged with an honorable discharge (Tr. 9, 31). She did not serve in a combat zone while on active duty (Tr. 9). She received two Good Conduct Medals, two Army Commendation Medals and two Army Achievement Medals (Tr. 30). She does not currently hold a security clearance (Tr. 8). She has never been married (Tr. 27). She has a three-year-old son (Tr. 27). Her son's father was enlisted when they had their relationship, and he was subsequently commissioned as an officer (Tr. 124).

After Applicant left active duty, four different companies employed her from January 2006 to July 2007 (Tr. 31-32). From July 25, 2007, to September 26, 2007, she was unemployed (Tr. 32-33). From September 27, 2007 to February 13, 2009, a company employed her as a program analyst (Tr. 32). Beginning in August 2008, her income gradually declined from \$5,000 per month to about \$2,500 per month. Her employer gradually reduced her hours as the end of their government contract approached (Tr. 90). She has been unemployed since February 13, 2009 (Tr. 32). She currently has an offer of employment from a defense contractor for \$5,000 per month (Tr. 32, 43).

In June 2006, Applicant's financial difficulties began (Tr. 56). She emphasized lack of child support payments from her son's father were a significant cause of her financial problems. Her son was born in February 2006 (GE 1). She paid \$2,500 to \$3,000 to her lawyer and for court costs to ensure she received child support payments (Tr. 37). In August 2008, she began receiving monthly, court-ordered child support payments (Tr. 34). Her son's father is now an active-duty captain in the U.S. Army (Tr. 35). He resisted making his child support payments for two years (Tr. 35). Since October 2008, he has paid \$555 for child support and an additional \$145 for child support arrearage (Tr. 36-37). In April 2009, she began receiving \$1,612 monthly for unemployment compensation (Tr. 41).

Between October 2008 and July 2009, Applicant used debt consolidation companies that were affiliated with each other (DCCI and DCCII) as her primary vehicles to resolve her delinquent debts (Tr. 59-60; GE 13 at 1). In October 2008, she planned to use DCC1 resolve the debts in SOR ¶¶ 1.c, 1.e, 1.f, 1.n, 1.o, and 1.t (GE 13 at 1). Her first payment to DCC1 was \$400 (AE B at 1), and then she increased her monthly payment to \$667 (Tr. 61).<sup>3</sup> Her last payment to DCCI was on January 2, 2009 in the amount of \$1,602 (Tr. 62). However, in April 2009, she stopped making payments to DCCI and began paying a second debt consolidation company (DCCII). DCCII was affiliated with DCCI and is now working on resolving her debts (Tr. 62-63). Her checking account statements show payments to DCCII of \$100 on April 9, 2009; \$360 on May 1, 2009, and \$360 on June 2, 2009 (Tr. 88; AE B at 15, 17, 19, 21). She subsequently added more SOR debts for DCCII to resolve (Tr. 86-88). Applicant received financial counseling while she was on active duty and subsequently from DCCI and DCCII (Tr. 58). In October 2008, she generated a detailed budget (GE 5 at 6, 24-26).

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<sup>3</sup> Her checking account statement showed \$400 paid on October 1, 2008 (AE B at 1), \$350 paid on November 3, 2008 (AE B at 3), \$667 paid on December 1, 2008 (AE B at 5), \$1,602 paid on January 2, 2009 (AE B at 7).

## Current status of SOR debts

Applicant accepted responsibility for ten SOR debts and plans to pay them using DCCII. The specific source and status of those ten SOR are as follows: 1.b (\$180—medical debt—not paid) (Tr. 86-88); 1.c (\$577—payday loan—not paid) (Tr. 65-66); 1.d (\$161—being paid down) (Tr. 71-72); 1.e and 1.k (\$1,485—duplication resulting from account overdraft—being paid down) (Tr. 66-69, 103-105); 1.l (\$172—store debt—not paid) (Tr. 105); 1.o (\$1,002—utility debt—being paid down) (Tr. 69-70); 1.p (\$597—being paid down) (Tr. 74-77); 1.q (\$420—collection company—not paid); and 1.t (\$6,946—Army and Air Force Exchange System—being paid down) (Tr. 70).

SOR ¶ 1.a (\$18,936). Applicant has retained the vehicle on which she owes \$18,936. Her last payment of \$600 was in July 2007 (Tr. 82). She has made sporadic efforts to re-establish the currency of the account (Tr. 82-83). She periodically contacts the creditor to let the creditor know she intends to pay her debt and she asks for deferment on payments until her financial circumstances improve (Tr. 83-84).

SOR ¶ 1.f (\$995—account overdraft). This debt was paid by DCCI (Tr. 72-73).

SOR ¶ 1.g (\$300—education debt). This debt was paid in 2008 (Tr. 92-93).

SOR ¶¶ 1.h and 1.i (\$187 and \$360—cable services debt). Applicant returned a cable box and paid the \$187 on May 11, 2009 (Tr. 93-94). Both debts are resolved.

SOR ¶ 1.j (\$1,100—Department of Defense Finance and Accounting Service (DFAS)) is disputed. At her Office of Personnel Management (OPM) interview, Applicant said she thought the Army over paid her prior to her separation from the service, and DFAS was attempting to collect the overpayment (Tr. 102). She also thought this debt was being turned over to the Internal Revenue Service (IRS) for collection; however, DFAS and the IRS were not able to provide information about the basis of the debt or even that she owed this debt (Tr. 95, 99-101). Ultimately DFAS informed her that this debt was cancelled (Tr. 96, 102-103).

SOR ¶ 1.m (\$147—telecommunications debt). This debt was paid on September 8, 2008 (Tr. 106-108; GE 6 at 40).

SOR ¶ 1.n (\$622—department store account). This debt was paid (Tr. 77-80).

SOR ¶ 1.r (\$290—supermarket—returned check). Applicant paid this debt on April 14, 2008 (Tr. 112-113; AE D).

SOR ¶ 1.s (\$604—collection company). In July 2009, Applicant paid \$210 to this creditor and intends to pay the remainder at the end of July 2009 (Tr. 109-110; AE I).

SOR ¶ 1.u (\$3,952—apartment lease). Applicant was making payments of \$329 per month; however, in December 2008, she stopped making payments because of her

pending unemployment (Tr. 110-111). She promised to resume payments of \$329 per month when she obtains employment (Tr. 111).

Applicant's federal tax refund was provided to a debt collector to pay a non-SOR education debt (Tr. 97). As of July 17, 2009, she still owes \$1,653 on this education debt (AE J). She promised to pay the remainder of this debt as soon as she is reemployed (Tr. 97-99).

### **Applicant's personal financial statement**

On October 6, 2008, Applicant's provided a personal financial statement (PFS) in response to DOHA interrogatories (GE 5 at 6). Her PFS showed net pay after deductions of \$5,195 and other income of \$2,050 (includes \$550 in child support received) (GE 5 at 6, 22). Her monthly expenses were: rent (\$1,775); groceries (\$300); clothing (\$150); utilities (\$279); car expenses (\$831—includes car payment of \$571); day care (\$700); and miscellaneous (\$1,872) (GE 5 at 6, 22). At the time of her hearing, she had moved in with a friend and was not paying any rent (Tr. 43). She contributes \$300 for groceries (Tr. 45). Her expenses such as car expenses and daycare are about the same as in October 2008 (Tr. 45-49). She has less than \$100 in her savings and checking accounts (Tr. 50-51). Her student loans are in deferment status (Tr. 52-55).

Applicant's October 2008 budget showed monthly payments to seven SOR creditors totaling \$768: 1.c (\$18 on \$577 debt); 1.d (\$30 on \$577 debt); 1.e (\$55 on \$1,810 debt); 1.h (\$187 on \$187 debt); 1.i (\$172 on \$172 debt); 1.o (\$153 on \$1,035 debt); and 1.t (\$153 on \$6,946 debt) (GE 5 at 6, 24).

Applicant's October 2008 budget also showed monthly payments to five non-SOR creditors totaling \$1,140: \$17 on unknown amount; \$300 on a \$300 debt; \$421 on \$421 debt; \$59 on \$59 debt; and \$360 on a \$360 debt (GE 5 at 24, 25).

Applicant was unable to maintain this level of payments into DCCI or DCCII after October 2008. Applicant's income was significantly decreased by her subsequent underemployment from October 2008 to February 2009 and her unemployment after February 2009.

### **Alleged falsification of security clearance applications (SF-86s)**

On January 3, 2008, Applicant completed her SF-86 (Tr. 113; GE 1). In regard to her delinquent debts, her SF-86 asked two questions. Applicant responded "No" to question 28a and "Yes" to question 28b (GE 1). Her SF-86 required her to explain any "Yes" answers. However, the only debt she disclosed was her \$18,936 delinquent car loan as indicated in SOR ¶ 1.a. Questions 28a and 28b asked:

## **Section 28: Your Financial Delinquencies**

Answer the following questions.

- a. In the last 7 years, have you been over 180 days delinquent on any debt(s)?
- b. Are you currently over 90 days delinquent on any debt(s)?

Applicant's SF-86 contains the following admonition:

### **Certification That My Answers Are True**

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (See section 1001 of title 18, United States Code).

(emphasis in original) (GE 1). Immediately below this admonition appears her signature (GE 1). Applicant admitted that she signed and certified this SF-86 (Tr. 113-115).

Applicant explained that when she completed her SF-86 she was not aware that the other debts were delinquent over 90 days (Tr. 114-119). She thought she was making the minimum payments necessary to keep her accounts current (Tr. 119). She obtained a credit report and provided it to the OPM investigator (Tr. 117). She went over her debts with the OPM investigator and provided detailed information about her debts and accounts (Tr. 117-119). She denied that she intentionally provided false information on her SF-86 (Tr. 114-119).

On May 5, 2009, Applicant submitted an SF-86 (AE A). She disclosed multiple financial problems on her SF-86, including her DCC plan (AE A).

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 overarching 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 [A]pplicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. 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 (4<sup>th</sup> 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). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[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**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines F (Financial Considerations) and E (Personal Conduct).

## Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts"; and "(c) a history of not meeting financial obligations." ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006) provides, "Applicant's credit report was sufficient to establish the [g]overnment's prima facie case that Applicant had . . . delinquent [SOR] debts that are of security concern." Applicant's history of delinquent debt is also documented in her OPM interview, her responses to DOHA interrogatories, her SOR response, and her oral statement at her hearing. She failed to ensure his creditors were paid as agreed. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Further inquiry about the applicability of mitigating conditions is required.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) 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;

(b) 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;

(c) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.



Applicant's conduct does not warrant full application of AG ¶ 20(a) because she did not act more aggressively and responsibly to resolve her delinquent debts. Her delinquent debts are "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Ten SOR debts, totaling about \$14,000 are in a payment plan that DCCII is managing. Seven SOR debts, totaling about \$2,900 are paid. The debt to the creditor in SOR ¶ 1.j is disputed. She has individual payment plans for the debts in SOR ¶¶ 1.a, 1.s, and 1.u, totaling about \$23,500. Once she obtains employment, which is likely because a contractor has sponsored her clearance application, her delinquent debts are likely to be paid and unlikely to recur. They do not cast doubt on her current reliability, trustworthiness, or good judgment.

Applicant receives partial credit under AG ¶ 20(b) because her financial problems initially resulted because of unemployment, underemployment, and her son's father's failure to pay child support for the first two years of his life.<sup>4</sup> She does not receive full mitigating credit because she did not establish that she acted with sufficient initiative and resolve to address her delinquent debts. She did not provide sufficient documentation about her income and expenditures over the last two years to receive full credit under AG ¶ 20(b).

AG ¶ 20(c) fully applies. Applicant received financial counseling and prepared a detailed budget. Moreover, she demonstrated a firm grasp of budgeting, payment plans, and expense reduction. She dramatically reduced her expenses when she became unemployed, and still managed to make some payments to DCCII out of her unemployment compensation and child support payments. She has the self-discipline necessary to reduce and resolve her debts. There are "clear indications that the problem is being resolved or is under control." She has also established full mitigation under AG ¶ 20(d) because she showed good faith<sup>5</sup> in the resolution of her SOR debts.

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<sup>4</sup>"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether the Applicant maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.

<sup>5</sup>The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

Applicant contested the validity of her \$1,100 debt to DFAS. AG ¶ 20(e) does not apply because of the lack of documentation supporting her dispute. However, under all the circumstances, I considered her statements to be sufficient to refute this debt. I am convinced if DFAS establishes that Applicant owes the government money, she will repay the government.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve her delinquent debts. Her debts resulted from lack of child support, underemployment, and unemployment. Her SOR listed 21 debts totaling about \$41,300. She paid seven debts. Ten debts are being resolved through DCCII. One debt is disputed. Three debts are in separate payment plans. She promised to continue to comply with her payment plans until all of her SOR debts are resolved. I am confident she will keep her promise<sup>6</sup> because of her continued progress on SOR debt resolution despite her unemployment.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

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 describes two conditions that could raise a security concern and may be disqualifying in this case in regard to the allegation Applicant provided a false security clearance application:

(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; and

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(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>6</sup> Of course, the government can re-validate Applicant's financial status at any time through credit reports, investigation and/or additional interrogatories. Approval of a clearance now does not bar the government from subsequently revoking it, if warranted. Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. Completion of a security clearance decision documents and establishes a warning to Applicants about the importance of financial responsibility and retention of documentation about debt resolution. The comments in this footnote do not imply that this clearance is conditional.

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

On January 3, 2008, Applicant provided an SF-86, which asked questions about debts more than 180-days delinquent in the last seven years and about debts currently more than 90-days delinquent. Applicant correctly responded "Yes" to the question about debts currently 90-days delinquent. She disclosed her largest debt, a car loan of almost \$19,000, which was delinquent over 90 days. She admitted she failed to disclose other, smaller debts that were also delinquent over 90 days. AG ¶¶ 16(a) and 16(b) both apply because she provided an incomplete answer about her delinquent debts. Further review is necessary.

AG ¶ 17 provides seven conditions that could mitigate personal conduct security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant credibly stated that when she completed her SF-86, she was not aware that other, smaller debts were also delinquent over 90 days. In January 2008, she was attempting to keep her smaller debts current by making minimal payments. On February 20, 2008, she provided detailed information about her delinquent debts to an OPM investigator. She also provided a credit report to the OPM investigation. In May 2009, she completed an SF-86 and provided complete information about her delinquent debts. She was candid and forthright at her hearing about her financial problems. I conclude Applicant's alleged falsification of her SF-86 is mitigated. Although she provided incomplete information on her January 3, 2008 SF-86, AG ¶ 17(f) fully applies. The falsification allegations are not substantiated. I am satisfied she did not deliberately and intentionally fail to disclose her delinquent debts with intent to deceive.<sup>7</sup> I find "For Applicant" in the Findings section of this decision with respect to SOR ¶ 2.

### **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.

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. AG ¶ 2(c). I have incorporated my comments under Guidelines F and E in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

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<sup>7</sup>The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

There is some evidence against mitigating Applicant's financial conduct. In October 2008, her monthly income, including child support, was about \$7,500. In October 2008, she established a payment plan with DCCI. However, she had sufficient income to have made greater progress resolving her delinquent debts. She should have been more aggressive in her efforts to ensure she established payment plans to resolve her delinquent debts. She did not fully document her payments to her creditors, and her communications to creditors about her debts. These factors show some financial irresponsibility and lack of judgment. Her history of delinquent debt raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole person concept is sufficient to warrant reinstatement of Applicant's security clearance. There is no evidence of a security violation. She is a law-abiding citizen. Her current financial problems were caused by factors beyond her control: (1) insufficient income; (2) her son's father's failure to pay child support over the first two years of his son's life; (3) unemployment, especially after February 2009; and (4) underemployment. Her SOR lists 21 debts totaling about \$41,300. She paid seven debts, totaling about \$2,900. Ten debts totaling about \$14,000 are in DCCII's payment plan. She has a payment plan for three SOR debts; however, she is currently only paying into one of the plans because of her current unemployment. She disputes her DFAS debt. Applicant has been unemployed since February 2009, and receives substantial credit for making some payments to DCCII and to her other creditors when she is under great financial pressure (her current income is only about \$2,300 a month from unemployment compensation and child support). The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant has achieved some important educational and employment goals, demonstrating her self-discipline, responsibility, and dedication. She graduated from high school, completed three years towards her bachelor degree in psychology, and received an honorable discharge from the Army after more than seven years of service. She earned two Good Conduct Medals, two Army Commendation Medals, and two Army Achievement Medals. Her employment history and contributions to a defense contractor speak well for her character. She completed financial counseling. She understands how to budget and what she needs to do to establish and maintain her financial responsibility. Applicant has demonstrated her loyalty, patriotism, and trustworthiness through her service to the U.S. Army and to the Department of Defense as an employee of a defense contractor.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude Applicant has mitigated financial considerations and personal conduct security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has fully mitigated or overcome the government's case. For the reasons stated, I conclude she is eligible for access to classified information.

### **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

Subparagraphs 1.a to 1.u: For Applicant

PARAGRAPH 2, GUIDELINE E: FOR APPLICANT

Subparagraph 2.a: For Applicant

### **Conclusion**

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

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MARK HARVEY  
Administrative Judge