



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-09337
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: George P. Kobler, Esquire

July 23, 2009

**Decision**

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CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for Sensitive Position (SF 86) on April 29, 2008. After an investigation conducted by the Office of Personnel Management (OPM), Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), dated January 22, 2008, for Applicant detailing security concerns for financial considerations under Guideline F, and for criminal conduct under Guideline J.<sup>1</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on February 11, 2009, with a detailed explanation of her finances which was dated January 29, 2009. Applicant admitted the

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<sup>1</sup> The SOR was misdated as January 22, 2008. From a reading of all other documents in the file, the actual date of the SOR is January 22, 2009. There is no prejudice to Applicant from the erroneous date on the SOR.

six allegations under Guideline F, and the one allegation under Guideline J. She requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 6, 2009, and the case was assigned to me the next day. DOHA issued a notice of hearing on April 16, 2009, scheduling a hearing on May 12, 2009. I convened the hearing as scheduled. Five documents were admitted as Court exhibits and used to establish requests for Administrative Notice of certain facts. One witness testified for the government. The government offered 33 exhibits, marked government exhibits (Gov. Ex.) 1 through 33, which were received without objection. Gov. Ex. 34 was marked but not moved by the government for admission. Applicant submitted eight exhibits, marked as App. Ex. A-H received without objection. Applicant and four witnesses testified on her behalf. The record was left open for both Department Counsel and Applicant to submit additional documents. Department Counsel timely submitted one document, marked Gov. Ex. 35 and admitted without objection. Applicant timely submitted three documents marked App. Ex. I-K admitted without objection. DOHA received the transcript of the hearing (Tr.) on May 19, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant admitted all factual allegations in the SOR. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 52 years old and has worked as a systems safety engineer for a defense contractor for over a year. She has never been married but has a daughter. She is a college graduate with degrees in both chemistry and chemical engineering (Gov. Ex. 1, Security clearance application, dated April 29, 2008).

Applicant started working as an engineer for government agencies after receiving her degrees. She worked three years in her first position with the government as a general engineer writing statements of work. She received a security clearance for this position. She accepted a promotion to another government position at a different location conducting contract audits that she held for two years with a security clearance. She was promoted again to a staff quality assurance engineer position at another location where she conducted contract surveillance for the government. She performed this job for two years and held a security clearance. She was again promoted this time to an Industrial Engineer position at a major Department of Defense agency. She authored policy and procedures and participated in development of performance improvement criteria for the command's response for the Malcolm Baldrige award. She held a security clearance for this position.

Applicant transferred to the command's contract management activity. She worked on the internal operations assessment team and conducted technical visits to field activities to ensure the command was meeting the requirements for continuous process improvement. She also audited the performance of government employees to ensure that contractor personnel were meeting contract requirements. She resigned

this position in November 2001. She continued to hold a security clearance until she resigned (Tr. 53-67).

Applicant was basically unemployed from November 2001 until March 2003. She went to work for a government contractor in March 2003 as a quality assurance engineer for products being delivered under contract to the government. She received an interim clearance upon commencing this employment. She was laid off in September 2004 when the contract was completed. She worked in temporary positions until July 2005 when she started working as a quality coordinator for a private company not working on any government contracts. She left that position in October 2005 when she started working for an engineering company as a technical lead for quality assurance on government contracts. She again received an interim clearance. She transferred to her present employer in April 2008 as a safety systems engineer and submitted her SF 86 for permanent granting of a security clearance (Tr. 67-73).

Applicant's monthly net salary is \$4,379.44, with monthly expenses of \$1,938.32. She makes a scheduled monthly \$800 payment on debts alleged in SOR 1.d and 1.e bringing her total monthly expenses to \$2,738.32. The monthly remainder in disposable or discretionary funds is \$1,641.12 (App. Ex. D, Personal Financial Statement, undated). Applicant also provided a letter from her landlord that she has rented an apartment since July 2008, she is an excellent tenant, and she pays her rent on time (App. Ex. E, Letter, dated May 7, 2009). Much of Applicant's debt was incurred because of her expense defending herself in a criminal trial in 2001/2002.

The SOR alleges, Applicant admits, and credit reports, answers to interrogatories and court documents verify that Applicant filed for bankruptcy in August 1988 and her debts were discharged in 1989 (SOR 1.a); a judgment was entered against her in September 2001 for \$2,309.70 (SOR 1.b); a judgment was entered against her from the same creditor in the same court in February 2002 for \$1,051.72 (SOR 1.c); two charged off accounts with a credit union for \$20,491 and \$9,683 (SOR 1.d and 1.e); and a home equity loan in collection for \$9,049 (SOR 1.f; Gov. Ex. 2, Response to Interrogatories, dated November 21, 2008 with attachments; Gov. Ex. 3, Court Information sheet, undated; Gov. Ex. 4, Credit report, dated June 4, 2008; and Gov. Ex. 5, Credit report, dated January 7, 2009).

SOR allegation 1.a is for a bankruptcy. Applicant admits that she filed a bankruptcy in August 1988 on the advice of her attorney and her debts were discharged shortly thereafter. She notes that the bankruptcy was over 20 year ago and she has worked for the government for over 19 years since then and purchased a home in 1997 ((Tr. 73-74; App. Ex. A, Response to SOR, dated January 29, 2009).

Delinquent debts SOR 1.b and 1.c are judgments in favor of the same retail store. Applicant admits to the debts but notes that she has only one account and one credit card with the store. She has not contacted the store but intends to contact them to establish a payment plan for the \$1,051 debt which is the one she believes she owes. She will contest the other debt (Tr. 74-75).

Delinquent debts SOR 1.d and 1.e are to the same credit union for a car loan in default and for a ready cash loan in default. She settled the car loan for \$6,995. The ready cash loan was settled for \$4,000. Her total debt to the credit union is approximately \$11,000. Payments of \$400 are being taken from her account each pay period to pay the settlement. The first debit of \$400 was on May 8, 2009 (Tr. 75-76; App. Ex. J, Bank Letter, date May 15, 2009).

Delinquent debt SOR 1.f is for a credit card in collection for \$9,049. Applicant settled this account for \$5,300 (App. Ex. C(a), Letter, dated February 4, 2009). The account was paid in full on April 24, 2009 (Tr. 76; App. Ex. C(b), Letter, dated May 7, 2009).

Applicant was a management and engineering technical lead at a major Department of Defense contracting command. She audited government engineers at field sites to ensure that they monitored the contractors to insure they were performing their functions and meeting contract requirements. As part of her function, she traveled to a field location in August 2000. The government engineers at the field site were not performing their functions well and had requested training from Applicant's command. The engineers picked a program for her to monitor with them. One engineer picked a program manufacturing radar electronic systems and examined systems safety engineering. Applicant and the government engineer met with the systems safety engineer for the contractor. Applicant monitored the government engineer's surveillance of the program to evaluate his meeting the government monitoring and surveillance requirements. Applicant returned to the field site in December 2000 to conduct another training session as scheduled. On this visit, she and the government engineer examined the contractor's integrated logistics support procedures (ILS) for the contract. No ILS deficiencies were noted to the contractor's systems safety engineer. Applicant returned to the field site again in January 2001. Applicant noted she went along only to monitor the actions of the government engineers and not to conduct surveillance (Tr. 77-8, 123-125). The sign-in log for the contractor showed that Applicant signed in as conducting surveillance (Gov. Ex. 8, Log, August 31, 2000 and December 13, 2000).

A Department of Defense criminal investigator testified at the security clearance hearing on May 12, 2009, that he received a call from a contracting command attorney informing him that she received a call from the government engineer at the field site Applicant visited. The engineer related that he participated in a site visit to a contractor with Applicant in December 2000 in which Applicant discussed with the contractor's safety systems engineer the lack of contractor's ILS procedures. The contractor's engineer related to him that Applicant took him aside and noted that the contractor needed procedures written for the contract and she had a business on the side that could help them write the procedures. The contractor's engineer was concerned there could have been a conflict of interest and wanted to advise government representatives of Applicant's approach to the contractor (Tr. 28-31).

The criminal investigator testified he interviewed the contractor's and government engineers at the field site concerning Applicant's action. He determined that the information provided him by the government attorney was accurate and that Applicant provided the contractor's engineer with a business card to contact her if he needed her to write procedures for him. He also learned from the on-site government engineers and the contractor's engineer that they did not agree with Applicant that ILS procedures need to be written for the contract since the procedures were not required under the contract. He learned that Applicant directed the government engineer she was monitoring and training to prepare and issue a Corrective Action Report (CAR) to the contractor noting the lack of an ILS.

The criminal investigator contacted Applicant posing as a representative of the contractor to take her up on her offer to write ILS procedures. The criminal investigator had the contractor's engineer contact Applicant by both e-mail and telephone requesting information from her on her efforts to write ILS procedures. Applicant returned to the engineer several proposals on the hours needed and cost for the effort. The contractor and Applicant agreed on a contract to provide the services (Gov. Ex. 22, Purchase Order, dated February 13, 2001). The criminal investigator also posed as a contractor employee and spoke with Applicant and recorded their conversations under court order. Applicant and Applicant's partner in the writing endeavor who was also a government employee in Applicant's command returned to the field site in February 2001. They met with the criminal investigator posing as a contractor employee, provided the investigator with the written ILS procedure, and received payment by check of \$12,000 (Tr. 31-46). In an e-mail to the criminal investigator who Applicant thought was a contractor employee, she told him "About the CAR, have [contractor's engineer] send a message to [government engineer] asking him for a copy of the closed CAR. I should keep as low a profile on this as possible" (Gov. Ex. 20, e-mail, dated February 15, 2001, Emphasis added)

Applicant was indicted in September 2001 for participating personally and substantially as a government employee in a contract in which she had a financial interest in violation of 18 United States Code Sections 208 (a) and 2 (Gov. Ex. 6, Indictment, dated September 19, 2001).<sup>2</sup> Applicant was tried in federal court in November 2001 and found not guilty at a jury trial (Gov. Ex. 7, Judgment of Acquittal, dated March 8, 2002). Applicant had to use the funds in her thrift savings account to pay her attorney (Tr. 115-116).

Applicant testified at the security clearance hearing on May 12, 2009, that there is a difference between writing a plan and writing a procedure. A plan tells the government what the end result of what the hardware will do and how the contractor will build the hardware for delivery. A procedure is an internal document telling the contractor employees how to do their job. Applicant offered to write procedures and not plans for the contractor not related to any government contracts. She made the offer because she wanted to get into writing procedures (Tr. 84-89).

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<sup>2</sup> Administrative notice is taken of the statute (See, Court Exhibit 2).

A CAR was issued to the contractor by the government field engineer on January 5, 2001 (Gov. Ex. 9, Letter, dated January 5, 2001). Applicant testified that she does not have the authority to issue a CAR nor direct the government engineer at the field site, who had the authority to issue the CAR, to issue such a document. Applicant was unaware of the program mentioned in the letter requiring the ILS. She was not aware of the CAR until notified by the contractor's engineer that one had been issued. Applicant also testified that the letter did not constitute a CAR. Applicant in her visits to the contractor never observed a deficiency requiring a CAR. She did note during her visits, and informed the commander, that the government engineers were deficient in monitoring, controlling, and surveillance of the contractors. Based on her evaluation, she believed the performance rating of some of the engineers dropped. She believes that the engineers had an issue with her and her evaluation (Tr. 93-102). The contractor in answer to the January 5, 2001 letter, informed the government engineer the CAR was not required because they had complied with the contract requirements (Gov. Ex. 10, Letter, dated January 18, 2001).

Applicant further testified that the contractor's engineer notified her that the CAR had been issued by the field site government engineer. She was surprised because she had not observed any deficiencies during her visits. The contractor's engineer told her that he had not heard back from the government engineer since the CAR was issued. Applicant told him that she would call the government engineer and tell him to respond to the contractor's engineer. He also asked her to draft internal company procedures telling company employees how to do their job (Tr. 102-107). Applicant communicated her actions with the engineer by e-mail and agreed on the product and delivery (See, Gov. Ex. 11 through 24, e-mails, letters, and receipts). The product was invoiced by Applicant (Gov. Ex. 24, Invoice, dated February 13, 2001), delivered (Gov. ex. 25, Receipt, dated February 20, 2001, and paid (Gov. ex. 26, Check, dated February 15, 2001).

Applicant immediately after being asked by the contractor's engineer to write procedures notified her supervisor of the request for outside employment. She then sent an e-mail to the ethics counselors. Applicant knew the procedures in place at the time for outside employment. If the request concerned a contract she was involved in, she had to recuse herself from the contract. If the employment was general employment by a contractor, she had to notify her supervisor and the ethics counselor and receive permission from the supervisor. She believes she received permission because her supervisor notified the next person higher in the chain of command that he did not see anything wrong with Applicant's outside employment writing procedures for the contractor. She continually communicated with the ethics counselor by e-mail who did not understand what Applicant was trying to do (Tr. 107-115, 117-122).

The government presented memorandum and e-mails concerning outside employment exchanged between Applicant, her supervisor, and the ethics counselor. Applicant requested approval for outside employment writing documents for the defense contractor in an e-mail at 1456 hours on January 30, 2001. Her supervisor asked the

command's ethics counselor for advice at 1502 hours, January 30, 2001. The ethics counselor advised that more information was needed about the employment from Applicant by e-mail at 1824 hours on February 1, 2001. The supervisor requested Applicant to provide additional information at 0741 hours on February 2, 2001. Applicant provided one sentence of additional information to her supervisor at 0843 hours on February 2, 2001. The message stated that Applicant would work for a company, Group S (Gov. Ex. 30, e-mails, at 2 and 3). Applicant noted that Group S's president has been a friend of hers since 1989. She was also a government employee for the same command as Applicant. Group S was a government contractor providing transportation services. The President of Group S assisted and worked on providing the procedure guides to the contractor. She accompanied Applicant to deliver the final product (Tr. 122- 126).

The ethics counselor, by e-mail at 1120 hours, February 2, 2001, responded that the additional information was not sufficient and recommended that Applicant draft a memorandum describing exactly what work she would perform for the defense contractor. Appellant's supervisor responded by e-mail at 1149 hours, February 2, 2001, with additional information about Group S that he had received from Applicant in response to his own questions. He also provided information on the role his office and Applicant played in contract supervision. He further noted "I do not see any conflict of interest in [Applicant's] proposed employment. She has assured me that no Government resources will be used to perform her employment." He also noted that she told him the employment would not conflict with her duties to the command (Gov. Ex. 30, e-mails at 1).

The ethics counselor was still not satisfied with the information and informed Applicant that more information was needed by e-mail at 1040 hours February 16, 2001. The ethics counselor wrote "Absent more detailed information from you, I am not in a position to make a recommendation one way or another regarding approval." Applicant testified that she interpreted the statement in her supervisor's e-mail that he did not see any conflict of interest as the required approval for outside employment (Tr. 118-120). Applicant delivered the procedures to the contractor on February 20, 2001.

The Joint Ethics Regulation required Applicant to obtain written approval from an "Agency Designee" before engaging in any business activity or compensated outside employment with a prohibited source. Prior to taking final action on such a request the Agency Designee is required to consult with the local ethics counselor for advice. The "Agency Designee" is Applicant's supervisor (DoD Directive 5500.7, dated August 30, 1993)

An Applicant witness who is the government official supervising the team Applicant served on as a contractor testified that she provided inspections for safety and quality. He does not believe Applicant is a security risk and feels she is trustworthy and ethical. He has traveled with her and he felt comfortable enough with Applicant's abilities to turn certain areas over to her without supervision (Tr. 146-153).

Applicant's co-worker testified she has worked with Applicant for over a year. She has no doubt as to Applicant's trustworthiness and ethics. She does not believe she is a security risk. (Tr. 153-157).

Another witness testified that she has known Applicant for over four years and worked with her when they both worked for a private business. Applicant always had a good working relationship with co-workers and customers. The witness socialized with Applicant and goes to church with her. She has never seen any conduct that would affect her ability to hold a security clearance. She is reliable and dependable (Tr. 157-162).

The president of Applicant's company testified that he tries to keep personal contact with his employees. She has received excellent evaluations and even a commendation for her work with the government. He has served as a facilities security officer and has held a security clearance since 1984. He is aware of security requirements. He has no reason to doubt Applicant's fitness for a security clearance. Before hiring Applicant, his company conducted a background investigation and did not find any issues. He is aware of her trial for conflict of interest but does not believe the charges affect her ability to have access to classified information. He finds her trustworthy and knows she follows the rules (Tr. 162-173).

Applicant's former co-worker wrote that he has known her as a government employee for over 20 years. He worked closely with her on a number of projects. He is impressed with her integrity, forthrightness, and ability to follow procedures. He states that Applicant without doubt is trustworthy and loyal to her country. He has no hesitation to grant her access to classified information (App. Ex. F, Letter, dated May 8, 2009).

Appellant's lawyer for her criminal trial notes that the case against her was weak and the government witnesses were not good. He characterized the criminal investigation as poor. He considers Applicant to be a friend and she is honest, forthright, and dedicated to her work and country (App. Ex. G, Letter, dated May 11, 2009).

## **Policies**

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

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 overarching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶



2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Financial Considerations:**

Under financial considerations, 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 ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an Applicant

with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An Applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. The delinquent debts that Applicant admits and are listed in credit reports are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (a history of not meeting financial obligations). Applicant had difficulty meeting her financial obligations because of the expense of her criminal trial and the periods of unemployment after the trial.

I considered Financial Considerations Mitigating Conditions (FC MC) ¶ 20(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), and FC MC ¶ 20(b) (the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances). Applicant filed bankruptcy over 20 year ago and her debts were discharged. Bankruptcy is a legal and permissible means of resolving debt. Since the bankruptcy was filed and completed many years ago, it is no longer of security concern. Of the five remaining debts, Applicant has paid one and settled two others with the same creditor. She is paying the settlement according to a plan. The two remaining debts are with the same creditor. Applicant believes there should only be one debt since she has only had one account with the creditor. She is contacting them and making arrangement to pay the remaining debt of about \$1,000. Since there is still outstanding delinquent debt even though being paid, the debts are current. Her debts arose because of the loss of employment and the need to use her funds to defend a criminal action. She acted responsibly by paying some of her debts when she became financially solvent and contacting her creditors to settle and pay her remaining debts. She acted responsibly under the circumstances.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Applicant has the means to pay her delinquent debts. She paid one debt, is paying two other debts by settlement agreement, and has contacted the remaining creditor to dispute one of the listed debts and to pay the last one. She has a plan of attack to stabilize her debts and be current with her payments. Applicant's actions establish that she is financially responsible. She has mitigated security concerns raised by her financial situation.

## **Criminal Conduct**

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature it calls into question a person's ability or willingness

to comply with laws, rules, and regulations (AG ¶ 30). Appellant was indicted and tried in federal court for the criminal offense of conflict of interest. These facts raise Criminal Conduct Disqualifying Conditions (CC DC) ¶ 31(a) (a single serious crime or multiple lesser offenses), and CD DC ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted). The alleged offense is serious. Even though the charge may have resulted in a finding of not guilty, it is still an allegation of criminal conduct that raises a security concern.

The government produced substantial evidence to establish the disqualifying conditions in AG ¶¶ 31(a) and (c). The burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the criminal conduct (Directive ¶ E3.1.15). An applicant has the burden to refute an established allegation or prove 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)).

Appellant has raised by her testimony Criminal Conduct Mitigating Conditions (CC MC) ¶ 32 (a) (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); CC MC ¶ 32 (c) (evidence that the person did not commit the offense); and CC MC ¶ 32(d) (there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, remorse, or restitution, job training or higher education, good employment record, or constructive community involvement).

Applicant was acquitted of the offense after an extensive trial and findings by a jury. However, this does not end the inquiry. Applicant states that her conduct was not a conflict of interest. She denies that she directed a CAR be initiated against the contractor and then she offered her services to the contractor to write the procedures required by the CAR for them. She attributes the issue to her informing the field engineers' supervisor that their performance was lacking and the lower performance rating. However, it was the contractor's engineer who Applicant spoke to and offered her services that was upset about the issue enough to notify the government of a potential conflict of interest. Applicant admitted that she presented her business card to the contractor's engineer and told him she was in the business of writing the required documents. Applicant also told the investigator that she should keep a low profile indicating that her activities were not proper. This was criminal activity. While Applicant was found not guilty of a criminal violation by a jury, her actions were sufficient to create doubt about her judgment, reliability, and trustworthiness.

Applicant's actions in obtaining permission to engage in outside activity and business are of equal importance. Applicant had been a government employee for over 19 years at the time of the incident. She had been briefed on ethical issues every year. She knew the rules and procedures. Her testimony that the comment by her supervisor that he saw no conflict of interest amounted to the required written approval is without merit and not credible. The string of e-mail correspondence between Applicant, her

supervisor, and the ethics counselor clearly shows that there was concern by the supervisor and ethics counselor about the Applicant's requested outside employment. Applicant was repeatedly asked to provide more information and she only provided limited information. The ethics counselor told her that she did not have sufficient information to properly advise the supervisor. Applicant went ahead and entered into the business arrangement and accepted funds from the contractor for her activities. Applicant clearly violated the ethical rules concerning outside employment. As a long term government employee, she knew she did not have permission to engage in the activity. She also knew because of the concern of the ethics counselor, that she probably would not gain that permission. While the supervisor had the decisional authority, he would not act unless he had clear approval from the ethics counselor. Applicant's action in going forward with the outside activity without prior written approval is a clear indication of Applicant's inability or unwillingness to comply with laws, rules, and regulations.

The circumstances facing Applicant concerning outside employment were not unusual in that she deliberately sought out the business. Her action could recur in that she could seek business from others if she wanted. Her actions cast doubt on her reliability, trustworthiness and good judgment. There is some evidence of successful rehabilitation. Her past supervisors and co-workers, and the president of her company establish that she is a good, willing, honest, and forthright employee. However, this does not offset the fact that Applicant used her governmental position to get outside work from a government contractor and continued with that work even though she did not have prior permission from her supervisor to engage in such activity. She willingly did not comply with the ethical laws and regulations. This is a clear indication that she also would not follow the rules and regulation concerning the safeguarding of classified information. For this reason, she has failed to mitigate security concerns for her criminal conduct.

### **“Whole Person” Analysis**

Under the whole person concept, the administrative judge must evaluate an applicant's security eligibility 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) 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 a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

Appellant established a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. She is not required, as a matter of law, to establish that she paid off each and every debt listed in the SOR. All that is required is that she demonstrates a plan to resolve her financial problems and take significant action to implement that plan. The entirety of her financial situation and her actions can reasonably be considered in evaluating the extent to which her plan to reduce her outstanding indebtedness is credible and realistic. Available, reliable information about the person's behavior, 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant established a meaningful track record of debt payment by presenting sufficient information to show she is taking sufficient, consistent, reasonable, and responsible action to resolve her financial issues. She contacted all of the creditors listed on her credit reports, paid some of her debts, settled others and making payments according to the settlement, and is trying to resolve the last remaining small debt. Appellant is not financially overextended and she is living within her means.

Applicant's criminal activity, even though a finding of not guilty was entered after a jury trial, is still a security concern. She willingly and deliberately sought outside employment from a government contractor amounting to a potential conflict of interest for a government employee. She knew the rules and procedures to be granted authority to engage in outside employment but she acted without securing the required written permission. These actions show her poor judgment, unreliability, and untrustworthiness. She has not shown an ability and willingness to comply with laws, rules, and regulations. This aspect of her life leads to the conclusion that she can display the same characteristics concerning the safeguarding of classified information.

Overall, on balance the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from financial considerations, but has not mitigated security concerns for criminal conduct.

### **Formal Findings**

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

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

Paragraph 2, Guideline J:	AGAINST APPLICANT
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Subparagraph 2.a:	Against Applicant
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### **Conclusion**

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

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THOMAS M. CREAN  
Administrative Judge