



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-10802  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 23, 2009

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) lists 13 debts totaling about \$36,000. She paid seven debts, totaling about \$4,800. She successfully disputed a debt for \$370. The five remaining debts are in established payment plans. Applicant did not intentionally fail to disclose her financial problems on her security clearance application. Applicant mitigated financial considerations and personal conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 29, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or Security Clearance Application (SF-86) (Government Exhibit (GE) 1). On February 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant (GE 5), 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 February 20, 2009, Applicant responded to the SOR (GE 6). On April 14, 2009, Department Counsel was prepared to proceed. On April 16, 2009, DOHA assigned the case to me. On April 17, 2009, DOHA issued a hearing notice (GE 6). At the hearing held on May 21, 2009, Department Counsel offered three exhibits (GE 1-3) (Transcript (Tr.) 18-19), and Applicant offered 12 exhibits (Tr. 20-24; AE A-L). Department Counsel did not object to my consideration of AE A-L, and I admitted them (Tr. 23-24). Additionally, I admitted the Notice of Hearing, SOR, response to the SOR, and an e-mail keeping the record open until July 10, 2009, to permit Applicant to submit additional evidence (GE 4-7). I received the transcript on May 29, 2009. On May 27, 2009, I received nine post-hearing exhibits, and on July 9, 2009, I received 24 post-hearing exhibits. These 33 exhibits were admitted without objection as AE M-AS.

### **Findings of Fact<sup>1</sup>**

In her SOR response, Applicant admitted responsibility for the debts in SOR ¶¶ 1.a, 1.h, 1.i, and 1.m with explanations. She also admitted the allegations in SOR ¶¶ 2.a and 2.b with explanations (GE 6). She denied the other SOR allegations with explanations (GE 6). Applicant's admissions are accepted as findings of fact.

Applicant is a 30-year-old employee of a defense contractor (Tr. 7). For the last six years, she has been employed as a computer operator (Tr. 25). She has held a Secret security clearance for the last ten years (Tr. 9). She received her high school diploma in 1996 (Tr. 7). She married in June 2000 (Tr. 24). She has two children ages eight and five (Tr. 25). She separated from her husband in July 2006 (Tr. 24). She and her husband worked for the same employer, and he failed to pay an employer-issued credit card (Tr. 60). After her husband left employment with the company, the company took the \$4,076 balance out of her pay over the next two years (Tr. 60-61). The company noted that they lived in a community property state, and debts incurred during marriage are joint debts of both the husband and wife (Tr. 61). On November 14, 2008, the \$4,076 debt to her employer was paid in full (AE P).

Applicant served on active duty in the Army for 2 ½ years (Tr. 8). She became pregnant, and she and her husband agreed she should leave active duty (Tr. 8). She received an honorable discharge (Tr. 8). She has an associate's degree in management

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<sup>1</sup>Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

(Tr. 7). She expects to earn her bachelor's degree in management/computer systems in a year (Tr. 7).

## **Financial Considerations**

Applicant's SOR did not describe any bankruptcy filings. However, it listed 13 delinquent debts, which are fully discussed in the next 13 paragraphs.

**SOR ¶ 1.a** (\$1,000 owed to her child's private school)—**Payment Plan**. Applicant's husband was supposed to pay this debt (Tr. 27). It became delinquent between January 2008 and May 7, 2009 (Tr. 28). The creditor did not inform her the account was delinquent for quite a long time because she was friends with the school's management (Tr. 27-29). She set up a payment arrangement and paid: \$50 on June 6, 2009; \$680 on June 26, 2009; and \$50 on July 1, 2009 (Tr. 29; AE A; AE E; AE F; AE W at 1).

**SOR ¶¶ 1.b and 1.c** (\$42 and \$44 owed to a pizza company)—**Paid**. In 2002 using Applicant's account, her husband wrote checks that were dishonored (Tr. 29-30). At the time she responded to the SOR, she was unaware of these two debts (Tr. 31). On April 20, 2009, she paid \$175 resolving the debt (Tr. 30; AE I).

**SOR ¶ 1.d** (\$5,500 owed a collection company for a home security system)—**Dispute/Payment Plan**. Applicant disputes this debt (Tr. 31). In 2006, a security company started billing her even though the company never installed the security system (Tr. 31-33). This was a joint debt with her husband (Tr. 32). On April 30, 2009, she entered into a payment plan with the creditor and made her first payment of \$300 (Tr. 32; AE K; AE Z). She also made \$300 payments on June 2, 2009 and July 1, 2009 (AE AA). She hopes to be reimbursed after the dispute filed in May 2009 is resolved (Tr. 32-33).

**SOR ¶ 1.e** (\$370 owed to a collection company)—**Disputed**. On April 20, 2009, Applicant contacted the collection company and learned the debt was transferred to another company (Tr. 35). She thought her husband may have incurred the debt because she had no knowledge of it (Tr. 35). The collection company promised to take action to have the debt removed from her credit report (Tr. 36; AE W at 2).

**SOR ¶ 1.f** (\$1,088 owed to a collection company based on a credit card debt)—**Paid**. Prior to 2009, Applicant was not aware of this debt (Tr. 36-37). She had a credit card with this same company and it was current (Tr. 36). She learned the debt was from a previous, joint credit card issued prior to 2006 (Tr. 37). She paid \$25 on April 20, 2009, \$250 payment on May 18, 2009, and the final \$250 on June 24, 2009 (Tr. 37-38; AE J; AE R; AE U; AE AE; AE AF; AE AG).

**SOR ¶ 1.g** (\$1,837 owed to a collection company)—**Paid**. Prior to 2009, Applicant was not aware of this debt (Tr. 39). She thought her husband may have written the checks that generated this debt (Tr. 40). On April 20, 2009, she asked the collection company for documentation to show she owed this debt (Tr. 39). On June 30,

2009, she agreed to settle this debt for \$918, and then she paid the settlement amount (AE W at 1; AE AO, AP).

**SOR ¶ 1.h** (\$1,117 owed to a collection company)—**Paid**. Applicant first learned of this debt in 2009 (Tr. 41). On April 30, 2009, she spoke to the creditor and agreed to and did pay \$335 (Tr. 41; AE L). She also agreed to pay \$50 a month starting May 30, 2009 (Tr. 41-42; AE T; AE L). On June 24, 2009, the creditor indicated the amount owed was \$698 and offered to settle the debt for \$454 (AE AK). On July 1, 2009, she paid \$454, resolving this debt (AE AN).

**SOR ¶ 1.i** (\$395 owed on a cable debt)—**Paid**. The debt originated in 2005 (Tr. 43). Applicant was not aware of it until 2009 (Tr. 43). After she received the SOR, she paid it (Tr. 43-44; AE B).

**SOR ¶ 1.j** (\$360 owed to a collection company)—**Paid**. Applicant's husband was responsible for this debt (Tr. 45-46). On May 14, 2009, she paid \$479 and thought the debt was resolved (Tr. 47). However, the creditor wanted an additional \$100 (Tr. 47-48). On May 29, 2009, she paid the remaining \$100 (AE X).

**SOR ¶ 1.k** (\$744 owed to an insurance company)—**Payment Plan**. This is an old automobile insurance debt (Tr. 48-49). Applicant paid \$62 on May 11, 2009 (Tr. 49; AE C; AE W at 1; AE S). On July 1, 2009, she paid \$196 (AE W at 1; AE AI, AE AJ). She expects this debt to be paid in full in October 2009 (AE W at 1).

**SOR ¶ 1.l** (\$3,818 owed to a collection company for a credit card)—**Payment Plan**. Applicant was making minimal payments on this account (Tr. 50, 52). Although this credit card was in Applicant's name alone, she and her husband both used this credit card to purchase items (Tr. 51-52). The account probably became delinquent when she was going through marital problems and the initial separation (Tr. 51-53). However, she was surprised to discover the creditor was reporting the account as delinquent because she believed she was paying enough to keep the account current (Tr. 50, 52). She obtained a credit report in 2008, and it did not show the account as delinquent (Tr. 50-51). On May 29, 2009, she made a payment arrangement with the creditor and paid \$75 on May 29, 2009, and \$75 on June 29, 2009 (Tr. 55; AE W at 1; AE AB, AE AC; AE AD). The current balance is \$4,174 (AE AC). The last three payments of \$1,000 monthly will be in August, September and October (Tr. 55-56). The debt will be paid off completely in October 2009 (Tr. 55).

**SOR ¶ 1.m** (\$19,868 owed to a collection company for a repossessed BMW)—**Payment Plan**. Applicant obtained a credit report in 2008, and it did not show the repossession of the BMW (Tr. 51). The vehicle debt was her husband's responsibility (Tr. 51). She was making the \$1,000 monthly payments from 2005 to May 2007 (Tr. 58-59). She gave the car to her husband in May 2007 because she could not afford the \$1,000 monthly payments (Tr. 51, 56-57). The BMW was her husband's car (Tr. 51). It was in his possession when it was repossessed in either October 2007 or June 2008, depending on the credit report entry (Tr. 56-57, 59-60). She was not aware of the repossession until 2009 (Tr. 58). She recognized that because she co-signed on the car

lien, she was jointly responsible for paying the debt (Tr. 51, 57-58, 84). She did not make payment arrangements until July 2009 because she hoped her husband would take responsibility for this debt (Tr. 62). On July 1, 2009, she made a \$552 payment and established her payment plan on a debt totaling \$19,868 (AE W at 2; AE AQ; AE R; AE S).

Applicant's financial problems resulted from her separation from her husband and his failure to pay adequate support (Tr. 66). At first, he was not paying any support (Tr. 66). She had to pay high levels of rent, car payments and other bills (Tr. 72). Her employer reduced her weekly work hours from 40 to 32 (Tr. 72). After a tough period of time financially, she gradually made progress (Tr. 73). Her work hours subsequently increased to 42, and her husband paid more child support (Tr. 73-74). On May 21, 2009, her husband provided a statement accepting responsibility for most of the delinquent SOR debts and promising to pay them (AE Q). Her husband wants to salvage their marriage and is paying child support, even though there is no legal separation agreement (Tr. 74).

Applicant's annual net salary is about \$80,000 (Tr. 62-63). Additionally, she receives \$1,500 monthly from her husband as child support (Tr. 63). Monthly expenses include: rent (\$1,850); groceries (\$300); clothing (\$50); cable, phone and internet (\$130); daughter's school (\$792); son's daycare (\$348); car payment (\$678); car insurance (\$220), gas (\$350), and her new payment arrangements with the various SOR creditors (Tr. 66). She has a monthly remainder of about \$3,400 (Tr. 66, 68-69). She has about \$3,000 in savings (Tr. 67). She recently opened three small credit-card accounts in order to build a positive credit history (Tr. 67-68).

### **Falsification of Security Clearance Application**

Applicant signed her SF-86 on May 29, 2008. In regard to her delinquent debts and repossessed vehicles, her SF-86 asked three questions. Applicant incorrectly responded, "No" to questions 27b, 28a and 28b (GE 1), which asked:

#### **Section 27: Your Financial Record**

Answer the following questions.

- b. In the last 7 years, have you had your wages garnished or had any property repossessed for any reason?

#### **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 at 1). Immediately below this admonition appears her signature (GE 1 at 1). Applicant does not contest that she signed and certified this SF-86.<sup>2</sup>

Around the time Applicant's husband moved out of their apartment in the summer of 2006, Applicant and her spouse each had a list of accounts they were supposed to keep current (Tr. 53). There was no written separation agreement. She paid her share of their debts as agreed (Tr. 53). She obtained an Equifax credit report in January 2008 before she completed her SF-86 (Tr. 51, 71). Her report did not show any delinquent accounts or the vehicle repossession (Tr. 51, 71). She assumed when the accounts did not appear on her 2008 credit report as delinquent that her husband was keeping his promise about paying those debts (Tr. 53-54). She did not keep a copy of the 2008 Equifax credit report that she relied upon; however, she noted the government's current report did not show delinquencies on the Equifax credit report prior to May of 2008 (Tr. 53-54). The other credit reporting companies were the sources of the allegations about delinquent debts (Tr. 53). She was completely unaware of any delinquent debts when she completed her SF-86 (Tr. 60).

When an Office of Personnel Management (OPM) investigator interviewed Applicant, she denied responsibility for the SOR debts because she was unaware of her culpability for those debts (Tr. 70). The OPM investigator did not give her copies of the credit report supporting the alleged debts (Tr. 70).

Applicant denied that she knowingly failed to disclose information on her SF-86 about delinquent debts and repossession of a BMW (Tr. 72). She promised to honor her payment plans (AE O at 3). She emphasized she is "an honest, trustworthy person, with integrity and [she] would do whatever it takes to safeguard any classified information that [she] is in contact with" (AE O at 3).

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<sup>2</sup>The only derogatory information disclosed on her SF-86 was a single entry, indicating in March 2007 she was charged with misdemeanor Theft by Check (GE 1 at Section 23). The theft charge was dismissed (GE 1 at Section 23).

## 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 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 [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 [or her] 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). AG ¶ 18 articulates the security concern relating to 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 ¶ 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 Government’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 SOR response and her oral statement at her hearing. She failed to ensure her 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 conditions under AG ¶ 20 may mitigate security concerns and 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)). She receives partial credit because her delinquent debts "occurred under such circumstances that [they are] unlikely to recur." I am convinced that she will continue with her payment plans and resolve all of her SOR debts. Her SOR debts 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 separation from her spouse in 2006 and some underemployment as her hours were reduced.<sup>3</sup> She does not receive full mitigating credit because she had sufficient information about her spouse's irresponsibility to know she should have stayed in touch with creditors on joint accounts. Moreover, she did not establish that she acted with sufficient initiative and resolve to address her delinquent debts after she learned of their existence. Essentially, she waited until April 2009 to aggressively address her delinquent debts.

AG ¶ 20(c) partially applies. Applicant did not receive financial counseling. However, there are "clear indications that the problem is being resolved or is under control." She has also established partial mitigation under AG ¶ 20(d) because she showed some, recent good faith<sup>4</sup> in the resolution of her SOR debts.

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<sup>3</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>4</sup>The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

Applicant contested the validity of two debts. She established one debt was transferred (SOR ¶ 1.e for \$370). She has made three \$300 payments (April, May and June 2009) on the other debt even though there is some question about whether it is valid (SOR ¶ 1.d for \$5,500). I will fully apply AG ¶ 20(e) to SOR ¶¶ 1.e and partially apply it to 1.d.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve her delinquent debts. Her SOR lists 13 debts totaling about \$36,000. She paid seven debts, totaling about \$4,800 (SOR ¶¶ 1.b, 1.c and 1.f-1.j). She successfully disputed a debt for \$370 (SOR ¶ 1.e). The five remaining debts are in established payment plans (SOR ¶¶ 1.a, 1.d and 1.k-1.m). She paid about \$2,500 in the April to July 2009 period to establish these five payment plans. In the last four months, her efforts have been sufficient to mitigate her SOR debts. 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>5</sup> because of her substantial recent progress on SOR debt resolution.

## 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.

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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].

(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>5</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.

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
- (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 May 29, 2008, Applicant signed her SF-86, in which she failed to disclose her vehicle repossession and several delinquent debts. In her SOR response and at her hearing, she admitted that she failed to disclose required financial information. AG ¶¶ 16(a) and 16(b) both apply and 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 disclosed on her SF-86 a Theft by Check charge, which the court subsequently dismissed. Her disclosure of derogatory information on her SF-86 concerning a dismissed charge of Theft by Check is an indication she was not trying to hide adverse information. She said she checked her Equifax credit report in January 2008, and there were no delinquent accounts noted. Applicant and her spouse separated in July 2006, and he was supposed to take care of the accounts listed on the SOR as delinquent. She credibly stated she was not aware of the vehicle repossession and delinquent SOR accounts when she completed her SF-86. I conclude Applicant's alleged falsification of her SF-86 is mitigated. Although she provided false information on her security clearance application, AG ¶ 17(f) applies to Applicant's failure to disclose financial information. The falsification allegations are not substantiated. I am satisfied she did not deliberately and intentionally fail to disclose her delinquent debts and repossessed vehicle with intent to deceive.<sup>6</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 relevant 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.

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<sup>6</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.

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. 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 those guidelines, but some warrant additional comment.

There is some evidence against mitigating Applicant's financial conduct. When she became separated from her husband, she should have been more aggressive in her efforts to ensure her husband paid their joint debts as he agreed. In February 2009, she received the SOR. She did not actively and aggressively investigate the debts listed on her SOR until April 2009. These factors show some financial irresponsibility and lack of judgment. Her history of delinquent debt and failure to provide accurate information on her SF-86 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 any security violation(s). She is generally a law-abiding citizen (her only alleged criminal offense is a dismissed charge of Theft by Check in 2007). Her current financial problems were caused by some factors partially or fully beyond her control: (1) insufficient income, (2) separation from her spouse and (3) underemployment. Her SOR lists 13 debts totaling about \$36,000. She paid seven debts, totaling about \$4,800. She successfully disputed a debt for \$370. The five remaining debts are in established payment plans. She paid about \$2,500 in the April to July 2009 period to establish these five payment plans. Her other debts, such as her apartment lease and car payments, are current. 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, earned an associates degree and has almost completed her bachelor's degree. She served on active duty in the Army for 2 ½ years, and received an honorable discharge. Her employment history and contributions to a defense contractor speak well for her character. She understands how to budget and what she needs to do to establish her financial responsibility. Applicant has demonstrated her loyalty, patriotism and trustworthiness through her service 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.m: For Applicant

PARAGRAPH 2, GUIDELINE E: FOR APPLICANT

Subparagraphs 2.a and 2.b: 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