DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
(Redacted)	)	ISCR Case No. 09-02281
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Julie Mendez, Esq., Department Counsel
For Applicant: Sheldon I. Cohen, Esq.

January 12, 2011

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 11, 2008. On May 13, 2010, the Defense Office of Hearings and Appeals (DOHA) sent her a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guideline F. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on May 25, 2010; answered it on June 30, 2010; and requested a hearing before an administrative judge. DOHA received the request on July 2, 2010. Department Counsel was ready to proceed on July 19, 2010, and the case was

assigned to an administrative judge on July 23, 2010. It was reassigned to me on August 3, 2010, based on workload considerations.

After coordinating with Applicant's counsel, DOHA issued a notice of hearing on September 1, 2010, scheduling it for September 29, 2010. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 8 were admitted in evidence without objection. Applicant testified, presented the testimony of three witnesses, and submitted Applicant's Exhibits (AX) A through EE, which were admitted without objection. Applicant's counsel submitted a memorandum of law, marked as Hearing Exhibit (HX) I. Department Counsel submitted a demonstrative exhibit summarizing the evidence, marked as HX II. Applicant's counsel submitted two demonstrative exhibits, marked as HX III and IV.[1] DOHA received the transcript (Tr.) on October 7, 2010.

Government Motion to Reopen the Record and Amend the Statement of Reasons

On October 20, 2010, Department Counsel filed a motion for leave to submit additional documentary evidence, amend the SOR to add an allegation that Applicant testified falsely at her hearing, and reopen the hearing to address the additional allegation of testifying falsely. (Hearing Exhibit (HX) V.) On the same day, I ordered Applicant's counsel to respond to Department Counsel's motion by October 30, 2010. (HX VI.)

Applicant's counsel responded on October 22, 2010, opposing Department Counsel's motion. (HX VII.) On October 25, 2010, Department Counsel submitted evidence in support of her motion. (HX VIII). On October 26, 2010, Applicant's counsel responded to Department's Counsel's evidentiary submission. (HX IX.) On November 2, 2010, I denied the motion. My order states, "The factual and legal basis for this ruling will be set out in the decision on the original Statement of Reasons." (HX X.)

At the hearing, Applicant was asked by Department Counsel if she had been questioned by another agency in 2007 about her finances, and she responded, "Yes." She was asked if she was aware of a judgment obtained against her by a law firm before she was interviewed, and she responded, "I don't believe I was." She was asked if the agency made her aware of it and she responded, "No; not that I recall." She was asked again if they asked her about the judgment and again she responded, "Not that I recall." She was then asked if she discussed the judgment with a Department of Defense investigator in October 2008, and she responded, "I don't recall." (Tr. 127-29.)

The evidence proffered by Department Counsel in support of her motion reflects that Applicant was questioned by the other agency in January 2008 about the judgment. The security investigation by the other agency was terminated without a clearance decision when contract between the agency and Applicant's then employer ended. (Tr. 126-29; HX IV at 11.)

[1] HX III and IV were originally marked as AX Y and Z. AX AA through EE were not relabeled. Thus, there are no exhibits marked as AX Y and Z.

Applicant's credit reports reflect a judgment for $19,713 against her obtained by a law firm in February 2006. (GX 2 at 1; GX 3 at 4.) When she was interviewed by a security investigator in October 2008, she acknowledged that she was trying to settle a "civil court case" with the law firm, but the interview summary does not reflect whether she knew that the law firm had obtained a judgment against her. (GX 5 at 8.)

Directive ¶ E3.1.10 provides, "The Administrative Judge may rule on questions o[f] procedure, discovery, and evidence and shall conduct all proceedings in a fair, timely, and orderly manner." Directive ¶ E3.1.17 provides, "The SOR may be amended at the hearing by the Administrative Judge on his or her own motion, or upon motion by Department Counsel or the applicant, so as to render it in conformity with the evidence admitted or for other good cause." Department Counsel's motion to amend the SOR was not made "at the hearing," and it does not seek to conform any of the SOR allegations to the evidence. Instead, it seeks to add a new allegation not encompassed by any of the original allegations. Thus, Department Counsel had the burden of showing "other good cause."

Under Directive ¶ E3.1.36, an administrative judge's clearance decision is final when no timely notice of appeal is filed, no timely appeal brief is filed after a notice of appeal has been filed, the appeal has been withdrawn, or when the Appeal Board affirms or reverses the clearance decision. The Directive is silent on an administrative judge's authority to keep the record open, although Directive ¶ E3.1.8 expressly grants authority to grant continuances. Keeping the record open is the equivalent of a continuance for a limited purpose.

The Directive also is silent regarding an administrative judge's authority to reopen a hearing when neither party requested that the record be kept open. The Directive ¶ E3.1.29 expressly provides that when the Appeal Board receives a notice of appeal, "No new evidence shall be received or considered by the Appeal Board." There is no express prohibition in the record against an administrative judge receiving additional evidence after the record has closed. In federal administrative practice, there is some authority indicating that an administrative judge has discretion to reopen the record before a decision becomes final. *See* 32 Fed. Proc., L. Ed. § 75:214 (administrative law judge may reopen a Federal Trade Commission proceeding for reception of further evidence); American Arbitration Association Commercial Arbitration Rule 36 (federal arbitrator may reopen hearing at any time before award is made). In deciding Department Counsel's motion, I concluded I had discretion to reopen the hearing for good cause, but I was not convinced that Department Counsel had demonstrated good cause, for the reasons set out below.

DOHA has an adequate remedy for false testimony. As Department Counsel conceded in her motion, DOHA has authority to issue another SOR alleging that Applicant testified falsely at her hearing.

While credibility is always an important issue, the proffered evidence had limited probative value as impeachment evidence. Applicant testified that she did not

remember the other agency questioning her about the law firm's judgment, but she has consistently admitted the facts on which the debt was based, disputed the amount of the debt, and made repeated offers to settle the debt for less than the full amount. At best, the proffered evidence might support a permissible inference that she lied about not remembering whether the other agency questioned her about the judgment. However, it does not directly contradict her testimony. Furthermore, it shows that she was candid and truthful during the other agency's questioning.

The focus of all the inquiries in this case was on the debt, not the fact that it was reduced to judgment. Applicant's testimony at the hearing reflects only that she did not remember when she first learned that the debt had been reduced to a judgment. Proof that she learned about the judgment during another agency's interview in January 2008 would not have changed my evaluation of her credibility. After reviewing the transcript and documentary evidence, and considering Applicant's candor and sincerity at the hearing, I was satisfied that my evaluation of her credibility and my weighing of the disqualifying and mitigating factors would not have been different if the proffered evidence had been presented at the hearing.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.f and 1.h, and denied the remaining allegations. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 52-year-old employee of a federal contractor. She was cleared for sensitive compartmented information (SCI) from 1988 until 1999. She has held a secret clearance since October 2008. (Tr. 84.)

Applicant graduated from college in September 1980 with a bachelor's degree in political science and history. She obtained a master's degree in political science in May 1983, and received her doctorate in political science in July 1984. She was a university professor from 1984 to 1987. (Tr. 70.) She worked for a consulting firm from 1987 to 1989.

Applicant was the vice-president of a company working as a federal contractor from September 1989 to May 1999, earning about $115,000 per year. (Tr. 119.) She worked as a principal in a private firm from March 1999 to September 2002, earning about $200,000 per year. (Tr. 72.) She was unemployed from September 2002 to May 2004, after the company downsized and eliminated her position.

Applicant began having financial problems after she lost her job in 2002. She lived off her savings for about six months. During 2003 and 2004, she borrowed about $80,000 from her parents. (AX J at 24.) She worked as a self-employed consultant from May to December 2004, earning about $3,000 per month.

Applicant filed a petition for Chapter 13 bankruptcy in September 2004, because her house was about to be foreclosed and she hoped to gain some time to sell it. When she filed her bankruptcy petition, she was awaiting a decision on a job that would have provided her with monthly income of $15,166. She was not hired. (AX J at 20; Tr. 122.) Her bankruptcy petition was dismissed in February 2005 for failure to make the required payments. (Tr. 85.) Her bankruptcy is alleged in SOR ¶ 1.e.

Applicant testified she did not file a Chapter 7 bankruptcy petition because she "didn't feel that it was right." She believed she would be able to find employment and repay the debts. (Tr. 85.)

Applicant sold her home in March 2005, valued at about $750,000, after it had been on the market for about two years. She was able to pay off the first and second mortgages on the home, and had about $16,000 remaining, which she used for living expenses. She lived with her parents part of the time and in extended-stay hotels part of the time. (Tr. 74.)

In addition to her consulting work, Applicant began working as a restaurant waitress in May 2005, earning $350 to $400 per week. (Tr. 76-77.) In August 2006, she began working for a former employer. She became a vice-president of her employer's company in April 2007, earning about $60,000 per year. Her annual pay increased to about $90,000 in 2008, and it increased again in February 2009 to about $176,000. She paid off several small bills in 2008, and in February 2009 she started contacting the creditors for her larger debts. Her pay was cut in half in March 2010 because of a business downturn. In August 2010, she began a new job with another federal contractor, earning $188,000 per year. (Tr. 80-83.)

Applicant divorced in August 1990, and she has a 24-year-old son whom she has supported through college. She received no child support from her son's father. She has cohabited with her domestic partner since May 2003. Her partner suffered a stroke and is disabled. His only income is his disability payments of about $1,900 per month. (Tr. 70.)

Applicant has paid or settled all the debts alleged in the SOR, except for the judgment alleged in SOR ¶ 1.a. The evidence concerning each of the debts is summarized below.

SOR ¶ 1.a (unsatisfied judgment for $19,713). The judgment was based on a dishonored check. Applicant's domestic partner engaged a law firm to assist him, and needed to pay the firm $15,000 to continue working on his case. Applicant gave the firm a $15,000 check, even though she had insufficient funds to pay it. She asked the firm to hold the check, but the firm deposited it, and it was dishonored. The record does not reflect the date of the check. Based on the evidence of record, I conclude that the check was uttered sometime after Applicant began her relationship with her domestic partner in May 2003, and probably was after September 2004, the date of her bankruptcy petition, because the law firm was not listed as a creditor in her bankruptcy petition. (AX

J at 15-17.) When Applicant did not redeem the check, the law firm obtained a judgment against her in February 2006 for $19,713, representing the $15,000 plus interest of $3,558 and costs of $1,155.

Applicant testified that she was unaware of the judgment until the background investigation regarding her security clearance. At the hearing, her attorney asked her if her first knowledge of the judgment was when she received the information from DOHA, and she responded, "I believe so; yes." (Tr. 89.) During a security interview in October 2008, she acknowledged that she owed the law firm for the dishonored check, and she told the investigator she was working with the law firm to settle it. (GX 5 at 8.) In response to DOHA interrogatories in June 2009, she stated that she had retained an attorney and was currently in settlement negotiations. (GX 5 at 5.)

In mid-March 2010, Applicant contacted the law firm and offered to settle the debt for 50% of the amount due, with an initial payment of $1,000, followed by monthly payments of $250 until the balance is paid. After an exchange of emails, her offer was rejected in late March 2010. (AX A.) Applicant authorized her attorney to offer a cash payment of $10,000, but her attorney advised her on August 24, 2010, that this offer also was rejected. (AX B.) On August 31, 2010, Applicant sent the firm a money order for $1,000 and promised to send $250 per month until the judgment is paid. (AX C.) As of the date of the hearing, she had received no response to the money order or the payment offer. (Tr. 93.)

SOR ¶ 1.b ($30,342 credit card account). Applicant used this credit card to pay her son's college tuition of about $15,000. The debt rose to more than $30,000 because of interest and fees. In May 2009, Applicant began making payments of $500 on this account. She reduced her payments to $50 for October, November, and December 2009, but resumed the $500 payments from January to May 2010. (GX 6 at 1, 7-14; AX F.) In June 2010, the creditor accepted an offer to settle the debt for $6,998.44. (AX D.) In July 2010, the creditor acknowledged receipt of the settlement amount. (AX F.)

SOR ¶ 1.c ($26,724 credit card account). Applicant disputed this debt, contending that it was a duplicate of SOR ¶ 1.b. She testified that she contacted the creditor, but the creditor was unable to locate the account. Applicant's credit report dated September 24, 2010, does not list any delinquent debts to this creditor. (AX EE.)

SOR ¶ 1.d ($31,050 credit card account). Applicant used this credit card for living expenses while she was unemployed. She made two monthly $1,888 payments in April and May 2009. She then made monthly $400 payments in June, July, and August 2009; $50 payments in September, October, November, and December 2009; $400 payments in January, February, and March 2010; $200 in April 2010; and $100 in May 2010. In June 2010, she settled the debt for $6,150. (GX 4 at 7; GX 6 at 11-14; AX DD; AXG, H, and I.)

SOR ¶ 1.f ($59,396 credit card account). Applicant used this credit card account to consolidate other debts at zero percent interest for a limited time. (Tr. 130.)

In April 2009, she began making monthly $250 payments on this credit card account. She stopped making the payments in February 2010 and began negotiating a settlement. (Tr. 109.) In June 2010, she received a settlement offer of $13,509, payable in two installments. (AX K.) In August 2010, the debt was settled. (AX L, M.)

SOR ¶ 1.g ($3,522 for auto lease). This debt was the balance due at the end of a car lease. (GX 3 at 13.) She turned in a leased car in early 2003. At the hearing, she could not remember if the amount due was for missed lease payments, excess mileage, or both. (Tr. 144.) The debt was included in Applicant's Chapter 13 bankruptcy, and the original creditor did not pursue any collection action. (Tr. 112.) After Applicant contacted the original creditor, she was able to settle the debt for $2,289. (AX N.)

SOR ¶ 1.h ($14,000 credit card account). Applicant made monthly $100 payments on this debt from November 2009 through June 2010. (AX O.) In June 2010, she settled the debt for $7,500, payable in three $2,500 installments. The third and final installment was paid in September 2010. (AX O.)

Applicant also presented evidence that she resolved numerous debts that became delinquent after she lost her job in 2002 but were not alleged in the SOR. Several of the delinquent debts were with high-end department stores, and one was for the purchase of a grand piano. The evidence concerning these debts is summarized in the table below.

Debt	Amount	Status	Evidence
Cell phone	$30	Paid, January 2008	AX R
Department store charge account	$5,000	Paid, date not reflected	AX Q
Department store charge account	$1,567	Paid, date not reflected	AX P
Department store charge account	$1,921	Paid, date not reflected	AX V
Department store charge account	$1,888	Account is current	AX W
Loan for purchase of grand piano	$23,336	Settled, December 2004	GX 4 at 19
Credit card	$168	Paid, April 2009	GX 4 at 20
Credit card	$12,561	Settled, March 2010	AX U, DD
Telephone bill	$418	Paid, March 2008	AX S
Judgment, fuel bill	$451	Paid, March 2008	AX T

Applicant submitted a personal financial statement to DOHA in May 2009, reflecting net monthly income of $14,319, expenses of $9,330, debt payments of $4,186, and a net remainder of $803. Her net income in May 2009 included about $4,000 in consulting fees from a former employer. (GX 4 at 23.)

At the hearing, Applicant testified that her net monthly income was about $9,600, because she had not received any additional consulting work from her former employer. She will receive about $125 per hour for any future work as a self-employed consultant. Her former employer testified that she is still "on board" as an independent consultant for future projects. (Tr. 35-36.) Her expenses have increased by about $800 per month because she is paying her son's student loans. Her total monthly expenses are $9,000-

$10,000 per month. She has no savings or investments. (Tr. 131-36.) In her current job, Applicant participates in a 401(k) program, and her employer pays for health, dental, life, and long-term care insurance. (Tr. 54.)

Applicant has two cars. When her father died in 2008, she took over the lease on her father's car, because her father had died in the car and her mother did not want to keep it. The record does not reflect when the lease on her father's car will expire. She leased a new car this year because of the age and mileage of her old car. Her cars are sensible, practical, non-luxury cars. Her total expenses for both cars are about $1,500 per month. (Tr. 133-34.)

Applicant is currently not repaying the $80,000 loan that her mother gave her when she was unemployed. Her mother has told her to repay the loan when she can, and if the loan is not repaid it will come out of her inheritance. (Tr. 141-42.) She owes her lawyer $2,000-$3,000, but apparently is not being pressured to pay it. (Tr. 136-37.)

The president of the company that was Applicant's former employer completed a 28-year career in the intelligence community, has worked as a contractor in the field of intelligence analysis for eight years, and has known Applicant professionally and socially since his former employment in the intelligence community. He testified that her performance was "excellent" and "extremely solid" while working for him as a program manager. When business slowed down, he waived his agreement with another federal contractor to not hire from each other, and encouraged her to accept another job where her skills could be better utilized. (Tr. 34-36.) He testified that Applicant is careful about expenses and lives within her means. She has "a good sense of what she can do, what she can afford." (Tr. 41.) He testified he has no hesitation in recommending Applicant for a security clearance. (Tr. 38.)

The founder and president of the company that currently employs Applicant has known her since the late 1980s. He testified that Applicant is one of the most effective employees he has ever had. He described her as a "solid citizen" who is hard working, determined, open, and frank. (Tr. 51.) He testified that Applicant is someone he trusts and respects, and he has no concerns about her ability to manage her personal finances. (Tr. 53.)

One of Applicant's former supervisors and colleagues retired from the intelligence community after 30 years of service before becoming a defense contractor about a year ago. He testified he supervised her work for another government agency and that she did a "great" job on a difficult and demanding project. After he retired, he was recruited by Applicant to work for her former employer. He took the job because he was impressed by her work and reputation. Her hallmark is integrity and skillful performance. He recommended that she be granted a clearance because of her loyalty, integrity, and "right moral compass." (Tr. 60-64.)

A colleague, who has known Applicant since 2006, submitted a letter on her behalf, highly recommending that she be granted a security clearance, notwithstanding

her previous financial problems. The colleague described Applicant as "concise, timely, and extremely organized." She also noted that Applicant was devoted to her son and family members. Applicant rented her colleague's townhouse for three years and her rent payments were timely and the townhouse was "beautifully appointed." (AX X.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the 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 commonsense 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

The DOHA Appeal Board may reverse an administrative judge's "decision to grant, deny, or revoke a security clearance if it is arbitrary, capricious, or contrary to law." ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (citing Directive ¶¶ E3.1.32.3 and E3.1.33.3.).[2] The federal courts generally limit collateral attacks on agency decision appeals to deciding whether the agency complied with its own regulations.

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

> Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Several disqualifying conditions under this guideline are relevant. AG ¶ 19(a) is raised by an "inability or unwillingness to satisfy debts." AG ¶ 19(b) is a two-pronged condition that is raised by "indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt." AG ¶ 19(c) is raised by "a history of not meeting financial obligations." AG ¶ 19(d) is raised by "deceptive or illegal financial practices such as . . . check fraud. . . ." AG ¶ 19(e) is raised by "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis."

Applicant's history of financial delinquencies establishes AG ¶¶ 19(a) and (c). AG ¶ 19(b) is not established because there is no evidence of frivolous or irresponsible spending and significant evidence of willingness to pay her debts. She held charge accounts at high-end department stores, owned an expensive home, and purchased an expensive grand piano, but she was earning $200,000 per year at the time. AG ¶ 19(d)

[2] *See* ISCR Case No. 09-03773 at 7 n. 4-6 (A.J. Jan. 29, 2010) (discussing appellate standards of review).

is raised by the evidence of the bad check for $15,000 uttered to the law firm. The evidence concerning the circumstances surrounding her utterance of the bad check is sparse, but sufficient to meet the relatively low standard of "more than a scintilla but less than a preponderance." AG ¶ 19(e) is established because Applicant spent more than she earned during her periods of unemployment and underemployment.

Since the Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (c), (d), and (e), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Several mitigating conditions are relevant to this case. Security concerns based on financial problems can be mitigated by showing that "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." AG ¶ 20(a). This is a compound mitigating condition, with three disjunctive prongs and one conjunctive prong. It may be established by showing the conduct was "so long ago," or "so infrequent," or "occurred under such circumstances that it is unlikely to recur." If any of the three disjunctive prongs are established, the mitigating condition is not fully established unless the conduct "does not cast doubt on the individual's current reliability, trustworthiness, or good judgment."

Although Applicant demonstrated poor judgment by uttering the dishonored check that was the basis for the judgment alleged in SOR ¶ 1.a, her conduct was an isolated incident that happened at least five years ago when her life was in turmoil. However, the totality of the evidence regarding her financial situation precludes full application of AG ¶ 20(a), because she incurred numerous delinquent debts, several were resolved only recently, and the debt arising from her poor judgment in uttering the bad check remains unresolved. Her debts were not incurred under circumstances making them unlikely to recur, because her employment history demonstrates that she works in an environment where downsizing and income reductions occur during business downturns.

Security concerns under this guideline also can be mitigated by showing that "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." AG ¶ 20(b). Both prongs, i.e., conditions beyond the person's control and responsible conduct, must be established.

Applicant's financial problems were the result of a business downturn that caused her to be unemployed and underemployed for about 20 months. She reacted responsibly by seeking other employment, borrowing money from her parents, selling her home, and living with her parents to save money. She paid off a $23,000 bank loan

in December 2004 and her home mortgages in 2005. She paid off several small debts in early 2008. She began contacting the creditors for her large debts in February 2009. Although the debt alleged in SOR ¶ 1.a has not been resolved, she "is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously." She is only required to "act responsibly given [her] circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct.'" ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009), citing IsCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008). Applicant has a reasonable plan to pay her only remaining delinquent debt, and she has taken significant steps to execute it. I conclude that AG ¶ 20(b) is established.

Security concerns under this guideline also can be mitigated by showing that "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control." AG ¶ 20(c). This mitigating condition also has two prongs that may be either disjunctive or conjunctive. If the person has received counseling, it must also be shown that there are clear indications the problem is being resolved or under control. However, if the person has not received counseling, this mitigating condition may still apply if there are clear indications that the problem is being resolved or under control. There is no evidence that Applicant has sought or received financial counseling, but the second prong of AG ¶ 20(c) is established by the substantial progress she has made in eliminating her delinquent debts and the steps she has taken to resolve her only remaining delinquent debt.

Security concerns under this guideline also can be mitigated by showing that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." AG ¶ 20(d). Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999).

An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. *See* ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant began resolving her delinquent debts in December 2004. She paid off her home mortgages in 2005. She paid several debts in early 2008. She has now has resolved all but one of the debts alleged in the SOR and numerous debts not alleged. She has attempted to negotiate a settlement or payment plan on the debt alleged in SOR ¶ 1.a, without success. Even without a formal agreement with the creditor, she has made a $1,000 payment on this debt and promised to pay $250 per month until it is paid.

While Applicant arguably could have contacted some of the creditors sooner than February 2009, her overall approach has been carefully planned, persistent, and in good faith. She has resolved all her delinquent debts except one, and she has established a plan and taken significant steps to resolve the one remaining debt. I conclude AG ¶ 20(d) is established.

Security concerns under this guideline also can be mitigated by showing "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." AG ¶ 20(e). Applicant has tried to negotiate a reduction in the debt alleged in SOR ¶ 1.a, but she has not disputed the underlying debt created by her dishonored $15,000 check. I conclude AG ¶ 20(e) is not established.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is mature, well-educated, intelligent, and highly respected by superiors and her colleagues. She was candid, sincere, and credible at the hearing. She has held clearances for many years and provided outstanding service to various clients in the intelligence community. She has raised a son without financial help from the son's father. Several career public servants with long experience in the national security arena provided glowing testimony about her character and integrity.

Applicant is still on the financial margin. However, she has displayed great resilience in responding to her financial problems. She is living a modest lifestyle. Her financial situation is likely to improve, because her son is an adult, eventually the lease

on her father's car will end, and she is likely to have opportunities to supplement her income as a self-employed consultant. Her mother is providing a financial safety net.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on financial considerations. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.h: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge