



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-04993
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

June 11, 2010

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations, personal conduct, and criminal conduct. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On April 1, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigation Processing version of a Security Clearance Application (e-QIP).¹ On August 14, 2009, the Defense Office of Hearings and Appeals (DOHA) furnished her a set of interrogatories pertaining to her financial situation, drugs, and other unspecified issues. She responded to the interrogatories on September 22, 2009.² On an unspecified date thereafter, DOHA furnished her with another set of interrogatories pertaining to her financial situation and other unspecified issues. She responded to those interrogatories as well on September 22, 2009.³ On November 9,

¹ Government Exhibit 1 (e-QIP), dated April 1, 2009.

² Government Exhibit 8 (Applicant's Answers to Interrogatories, dated September 22, 2009).

2009, DOHA issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the Department of Defense on September 1, 2006) (hereinafter AG). The SOR alleged security concerns under Guidelines F (Financial Considerations), E (Personal Conduct), and J (Criminal Conduct). It detailed reasons why DOHA could not make a 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 a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on November 30, 2009. In a sworn, written statement, dated December 29, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on February 25, 2010, and the case was assigned to me on March 4, 2010. A Notice of Hearing was issued on March 12, 2010, and I convened the hearing, as scheduled, on March 30, 2010.

During the hearing, eight Government exhibits and one Applicant exhibit were admitted into evidence, without objection. Applicant testified. The record remained open to afford Applicant the opportunity to supplement it, and on April 6, 2010, she submitted four additional documents, which were admitted into evidence as Applicant exhibits B through E, respectively, without objection. On April 29, 2010, she submitted an additional document, which was admitted into evidence as Applicant exhibit F, without objection. The transcript (Tr.) was received on April 7, 2010.

Findings of Fact

In her Answer to the SOR, Applicant admitted nearly all of the Guideline F factual allegations (¶¶ 1.b. through 1.j.), one of the Guideline E factual allegations (¶ 1.c.), and one of the Guideline J factual allegations (¶ 3.a.) of the SOR. She denied the remaining factual allegations (¶¶ 1.a., 2.a., 2.b., and 3.b.).

Applicant is a 39-year-old employee of a defense contractor, currently serving as a part-time independent contractor for a federal contractor,⁴ and she is seeking to obtain a security clearance. She had previously been granted an interim security clearance which was subsequently terminated.⁵ She earned a bachelor's degree in an unspecified discipline in May 1999, and an M.A. in Sociology in December 2007.⁶ From June 1997 until March 2009, when she commenced her current employment with the

³ Government Exhibit 2 (Applicant's Answers to Interrogatories, dated September 22, 2009).

⁴ Government Exhibit 1, *supra* note 1, at 20.

⁵ Tr. at 6.

⁶ Government Exhibit 1, *supra* note 1, at 17-18; *Id.*

defense contractor, Applicant was employed by a number of employers in a variety of positions, including answering service telephone secretary and supervisor, assistant contract administrator, human resources assistant, elementary school teacher, tutor and administrative assistant, secretary, teaching assistant and research assistant, marketing assistant, social worker, and speakers bureau outreach coordinator.⁷ She also went through a three-month period of unemployment (October 2007 until January 2008).⁸ Applicant has never been married.⁹

Financial Considerations

There was nothing unusual about Applicant's current finances until about mid-2007. She admits to previously having been deeply in debt when she got out of college because she had "no financial savvy."¹⁰ However, she contends that after working hard for seven years, she was able to get herself out of debt.¹¹ She was living within her means and paying more than the minimum on all of her credit cards.¹² In March 2007, she satisfied the monetary portion of a court-ordered stipulated judgment and costs of \$6,000 for wrongfully distributing and reproducing copyrighted songs.¹³ In April 2007, Applicant got engaged, and in preparation for her March 2008 wedding, she made a "conscious decision" to increase the credit limits on her credit cards.¹⁴ She anticipated being able to reduce the balances once she was married with financial assistance from her husband-to-be.¹⁵

In October 2007, she lost her primary job as a social worker, and for the next three months, was barely able to pay her rent, car, telephone, and food.¹⁶ Although she obtained employment at a new primary job in January 2008, at a salary comparable to what she had been earning, now as a salaried employee, she was no longer eligible for 10-20 hours of overtime pay per paycheck.¹⁷ At the same time, her engagement was

⁷ *Id.* at 20-37.

⁸ *Id.* at 22-23.

⁹ *Id.* at 42-43.

¹⁰ Tr. at 43, 64; Applicant's Answer to the SOR, dated December 29, 2009, at 1; Applicant Exhibit A (Statement, dated March 30, 2010), at 1. It should be noted that Applicant Exhibit A is merely an updated version of her Answer to the SOR.

¹¹ *Id.*

¹² *Id.*; Tr. at 37, 65.

¹³ Government Exhibit 2 (Notice of Satisfaction of Monetary Portion of Judgment, dated March 7, 2007), at 1-6.

¹⁴ Tr. at 37.

¹⁵ *Id.*

¹⁶ Government Exhibit 8 (Personal Subject Interview, dated April 28, 2009), at 1.

¹⁷ Tr. at 37-38.

broken, and she incurred the added expenses of lost deposits and other wedding-related expenses.¹⁸ Throughout 2008, Applicant was barely able to keep her head above water and was “overwhelmed by the debt” facing her, as well as depressed about her personal situation.¹⁹ Accounts became delinquent. Some accounts were placed for collection or charged off.

In an effort to address her debts, Applicant started searching for additional part-time jobs to generate money to pay those debts.²⁰ She obtained a third job – a part-time teaching position – earning a little over \$400 each month.²¹ In February 2010, Applicant became aware that layoffs at her primary job were coming, so she started preparing, financially, for the inevitable. She was still living paycheck-to-paycheck, and was not able to make payments towards her debts. She was finally laid off from that job the week before the hearing.²² She was temporarily suspended from her part-time work for the government contractor, where she was earning \$30 per hour, when her interim clearance was terminated.²³ At the time of the hearing, no decision had yet been made on her application for \$240 per week in unemployment compensation.²⁴

The SOR identified 10 purportedly continuing delinquencies, totaling approximately \$20,726. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in the credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agent name, or under a different creditor or collection agent name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits. Those debts listed in the SOR, nine of which Applicant admitted, and their respective current status, according to the credit reports, documents submitted by Applicant, and Applicant’s written and testimonial comments relative thereto, are described below:

SOR ¶	TYPE DEBT	AMOUNT	STATUS
1.a.	Satellite television	\$283	Collection. Contract term disputed by Applicant, claiming the signature is not hers. ²⁵ Attempting to resolve. ²⁶ Unpaid. ²⁷

¹⁸ Applicant’s Answer to the SOR, *supra* note 10, at 1; Applicant Exhibit A, *supra* note 1, at 1.

¹⁹ *Id.*

²⁰ Tr. at 38.

²¹ *Id.* at 50.

²² *Id.* 49.

²³ *Id.* at 50.

²⁴ *Id.* at 54.

²⁵ *Id.* at 28. Applicant claimed to have a copy of the disputed document, but failed to furnish it.

²⁶ Applicant Exhibit A, *supra* note 10, at 2.

SOR ¶	TYPE DEBT	AMOUNT	STATUS
1.b.	Mobile phone service	\$316	Collection. Applicant believes she paid account when she cancelled service. If not, she intends to eventually pay it. ²⁸ Unpaid. ²⁹
1.c.	Credit card	\$2,763	Collection. \$3,063 charged off. Monthly \$50 payments since May 2009, under payment plan. ³⁰ Balance as of Mar. 2010: \$2,463. ³¹
1.d.	Department store charge card	\$753	Collection. Charged off. Account settled for \$414.48, and paid Feb. 5, 2010. ³²
1.e.	Line of credit	\$11,295	Charged off. Unpaid. ³³
1.f.	Credit card	\$1,239	Collection. Charged off. Unpaid. ³⁴
1.g.	Credit card	\$1,141	Collection. Unpaid. ³⁵
1.h.	Credit card	\$610	Collection. \$563 charged off. Unpaid. ³⁶
1.i.	Mail order	\$1,163	Collection. Unpaid. ³⁷
1.j.	Department store charge card	\$1,163 ³⁸	Collection. Account settled for \$221.18, to be paid by Oct. 25, 2009. ³⁹ Unpaid. ⁴⁰

²⁷ Government Exhibit 3 (Equifax Credit Report, dated March 26, 2010), at 1.

²⁸ Applicant Exhibit A, *supra* note 10, at 2.

²⁹ Government Exhibit 3, *supra* note 27, at 1; Tr. at 32.

³⁰ Government Exhibit 2 (Collection Agency letter, dated September 22, 2009); Applicant Exhibit A, *supra* note 10, at 3; Bank ATM & Debit Card Withdrawals Register, attached to Applicant Exhibit A; Tr. at 32-34.

³¹ Government Exhibit 3, *supra* note 27, at 1.

³² *Id.* at 2; Applicant Exhibit A, *supra* note 10, at 3; Tr. at 38-39.

³³ *Id.* at 39-40.

³⁴ *Id.* at 45-46.

³⁵ *Id.* at 46-47.

³⁶ *Id.*

³⁷ *Id.*; Applicant Exhibit A, *supra* note 10, at 4.

³⁸ Although the SOR reflects the delinquent balance as \$1,163, an amount identical to the delinquent balance reflected in SOR ¶ 1.i., it appears that the stated amount is erroneous, as no other evidence supports that balance. The balances for this particular account, reflected in the various credit reports in evidence, are: \$462 - Government Exhibit 5 (Combined Experian, Trans Union, and Equifax Credit Report, dated April 15, 2009), at 18; \$498 - Government Exhibit 4 (Equifax Credit Report, dated September 30, 2009), at 3; and \$437 - Government Exhibit 3, *supra* note 27, at 2. In addition, according to the creditor's collection agency, the balance in September 2009, was \$506.58. See Government Exhibit 2 (Collection Agency letter, dated September 22, 2009). Department Counsel conceded the amount should be reflected as \$498. Tr. at 63.

³⁹ *Id.*

⁴⁰ *Id.* at 46-47.

When she was laid off in March 2010, Applicant stopped making payments on her delinquent debts and started using the money for necessities.⁴¹ She is now in what she calls her “unemployment mode,” reducing her spending.⁴² She has no active credit cards.⁴³ As of the hearing date, she estimated she had \$600-\$700 in savings.⁴⁴ In addition to the SOR debts, Applicant also has two dozen, non-SOR, student loan accounts, totaling approximately \$55,000, which previously became delinquent.⁴⁵ In November 2009, she applied to have some of those loans consolidated,⁴⁶ but, to date, they have not been consolidated because they first have to be in good standing.⁴⁷ She still has not completed the required paperwork for the consolidation of the remaining student loans.⁴⁸ In addition, Applicant contends her income is such that the loans should be in “hardship deferment,”⁴⁹ but has submitted no documentary evidence to support her contention. The March 2010 credit report indicates they are all in collection.⁵⁰

On September 22, 2009, Applicant submitted a personal financial statement indicating monthly net income of \$2,470.56, monthly expenses of \$2,339, an additional \$160 scheduled monthly debt payments, and a net remainder of minus \$29.03 available for discretionary spending.⁵¹ Now, although she reduced her expenses, her reduced income still does not enable her to present a more positive financial outlook.

Applicant met with a credit union loan officer one time, seeking financial counseling.⁵² The loan officer advised her to pay down her debt substantially before seeking a loan on her automobile.⁵³ There is no evidence that Applicant ever received any other counseling on debt management, loan consolidation, budgets, or repayment plans. She has not addressed the bulk of her delinquent debts because she claims she has not had the opportunity to do so. She worked 50 to 60 hours per week at her

⁴¹ *Id.* at 52.

⁴² *Id.* at 53.

⁴³ *Id.* at 55.

⁴⁴ *Id.* at 52.

⁴⁵ *Id.* at 56.

⁴⁶ Applicant Exhibit E (Direct Loans letter, dated November 7, 2009); Tr. at 58.

⁴⁷ *Id.* at 73, 79.

⁴⁸ *Id.* at 73-74.

⁴⁹ *Id.* at 56.

⁵⁰ Government Exhibit 3, *supra* note 27, at 1-4.

⁵¹ Applicant's Personal Financial Statement, dated September 22, 2009, attached to Government Exhibit 2, *supra* note 3.

⁵² Tr. at 39-40, 55-56.

⁵³ *Id.* at 56.

primary job, was on the road, making presentations, and teaching, and prioritized those activities ahead of addressing her delinquent debts.⁵⁴ The entire process was just “so overwhelming.”⁵⁵ Applicant’s primary goal was to obtain a permanent job to replace the one she recently lost. The type of job is important to her, for it must be one that “makes a difference,” and gives back to the community.⁵⁶ Her reason for obtaining the part-time job with the government contractor was to make enough additional income to help pay off her delinquent debts.⁵⁷

Personal Conduct

At some point prior to September 2006, Applicant’s computer was utilized to wrongfully download music. Applicant contends that her former roommate did so, expressly against her wishes. Nevertheless, despite her admonition, the downloading took place. Her roommate subsequently acknowledged that he did the download against her directions.⁵⁸ By the time she found out about it and had received the summons and went to court, she and her roommate no longer resided together and the computer had crashed so it had been given away. She could not prove the download took place on her roommate’s login rather than hers.⁵⁹ Applicant was sued in a civil suit in federal court for wrongfully distributing and/or reproducing copyrighted sound recordings owned by the owners of those copyrighted sound recordings, in violation of Title 17, U.S. Code, § 501 (infringement of copyright). In March 2007, she satisfied the monetary portion of a court-ordered stipulated judgment and costs totaling \$6,000.⁶⁰

On April 1, 2009, Applicant applied for a security clearance and submitted a completed e-QIP. The SOR alleges that in response to e-QIP § 23.a., Applicant deliberately failed to disclose her illegal use of drugs or drug activity.⁶¹

In the last 7 years, have you illegally used any controlled substance, for example, cocaine, crack cocaine, THC (*marijuana, hashish, etc.*), narcotics (*opium, morphine, codeine, heroin, etc.*), stimulants (*amphetamines, speed, crystal methamphetamine, Ecstasy, ketamine,*

⁵⁴ *Id.* at 75-77.

⁵⁵ *Id.* at 76.

⁵⁶ *Id.* at 109. It should be noted, effective May 3, 2010, Applicant obtained a new job in which she will earn an annual salary of \$35,000. Applicant Exhibit F (E-mail from Applicant to Department Counsel, dated April 29, 2010).

⁵⁷ Tr. at 105.

⁵⁸ Facsimile from former roommate, dated November 30, 2009, attached to Applicant’s Answer to the SOR, *supra* note 10.

⁵⁹ Applicant Exhibit A, *supra* note 10, at 4; Tr. at 83-84.

⁶⁰ *Id.* at 85.

⁶¹ It should be noted that the quoted question from the e-QIP above is not actually the one cited in SOR ¶ 2.b., but somewhat similar to it. While the exact wording differs, the quotation is sufficiently similar to still have furnished sufficient notice to Applicant of the nature of the inquiry.

etc.), depressants (*barbiturates, methaqualone, tranquilizers, etc.*), hallucinogenics (*LSD, PCP, etc.*), steroids, inhalants (*toluene, amyl nitrate, etc.*) or prescription drugs (including painkillers)? Use of a controlled substance including injecting, swallowing, experimenting with or otherwise consuming any controlled substance.

Applicant answered “no” to the question,⁶² and certified that her response was true, complete, and correct to the best of her knowledge and belief and was made in good faith.⁶³ Contradicting that response was information appearing in a December 2006 Federal Bureau of Investigation (FBI) application for employment where she acknowledged having used marijuana during “the last 3 years.”⁶⁴ Applicant subsequently denied intentionally falsifying her response, and stated that her brief experimentation with marijuana was so long ago, and believed to be more than seven years ago, that she barely remembered it.⁶⁵ She tried marijuana in high school,⁶⁶ and once, while in college, after acquiring it from a cousin who had a prescription for medical marijuana use.⁶⁷

The SOR also alleges, that in response to question 9 of the interrogatories propounded by DOHA (Government Exhibit 2), pertaining to ever having used substances, including marijuana, on September 22, 2009, she said “no.” She swore or affirmed that the information was true and correct to the best of her knowledge and belief.⁶⁸ Applicant subsequently denied intentionally falsifying her response, and stated that in the rush to complete the answers and get them notarized, her response was an oversight. Also, the substance abuse had been so long ago because she did not currently use drugs and had not done so in a long time.⁶⁹ During the hearing she added that while she knows it is a very poor excuse, in her rush to complete her answers, she simply did not read the question carefully and made a mistake.⁷⁰ She denied knowingly falsifying her response.⁷¹

Criminal Conduct

⁶² Government Exhibit 1, *supra* note 1, at 53.

⁶³ *Id.* at 64.

⁶⁴ Government Exhibit 6 (FBI Records Management Division, National Name Check Program, Official Name Check Response, dated April 16, 2009).

⁶⁵ Government Exhibit A, *supra* note 10, at 5; Tr. at 85.

⁶⁶ Tr. at 89.

⁶⁷ *Id.* at 88-89.

⁶⁸ Government Exhibit 2, *supra* note 3, at 3.

⁶⁹ Applicant Exhibit A, *supra* note 10, at 5.

⁷⁰ Tr. at 86-87, 107.

⁷¹ *Id.* at 87.

While attending college in 2005, Applicant generally took a train to school. She claimed that, at times, when the automatic ticket machine was broken, she would get on the train without a ticket, get off at the next stop to purchase a ticket, and resume her train ride to her destination.⁷² On March 31, 2005, she was charged with evasion of fare.⁷³ The date to appear was changed and eventually extended, and, on July 10, 2005, a warrant was issued for failure to appear.⁷⁴ Applicant initially claimed she was not aware of the citation until she learned of it through the security clearance process.⁷⁵ At the hearing, she modified her explanation to include having forgotten about it.⁷⁶ She contacted the authorities and, on January 19, 2010, paid the \$158 charge.⁷⁷

The SOR also alleges that Applicant's actions resulting in the 2006 court-ordered stipulated judgment for infringement of copyright constituted criminal activity. As noted above, that action was merely a civil lawsuit filed by companies as plaintiffs, not a criminal matter prosecuted by the government before the court.

Character References

Two of Applicant's former university professors, for whom she was both a student and a teaching assistant, have known Applicant for approximately 19 and 17 years, respectively. They are both impressed by her scholarship, organizational and leadership skills, and ability to handle stressful situations and multiple tasks.⁷⁸ She is hard working, trustworthy, reliable, and efficient.⁷⁹

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."⁸⁰ As Commander in Chief,

⁷² *Id.* at 92; Applicant Exhibit A, *supra* note 10, at 6.

⁷³ Government Exhibit 7 (Case Report, dated September 30, 2009). Under the relevant state penal code, the actual act is an infraction characterized as evasion of the payment of a fare of the system, and is treated the same as such activities as smoking, eating, or drinking on the system, expectorating upon a system facility or vehicle, and willfully disturbing others by engaging in boisterous or unruly behavior. The maximum fine is \$250 and 48 hours community service.

⁷⁴ *Id.*

⁷⁵ Applicant Exhibit A, *supra* note 10, at 6.

⁷⁶ Tr. at 92-93.

⁷⁷ Bank ATM & Debit Card Withdrawals Register, attached to Applicant Exhibit A, *supra* note 30.

⁷⁸ Applicant Exhibit C (Letter from professor, dated July 13, 2008); Applicant Exhibit D (Letter from professor, dated July 22, 2008).

⁷⁹ *Id.* Applicant Exhibit C.

⁸⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁸¹

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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 commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁸² The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.⁸³

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation

⁸¹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁸² “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

⁸³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁸⁴

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁸⁵ 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. 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations 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. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns.

As noted above, there was nothing unusual about Applicant’s current finances until about mid-2007, when she satisfied the monetary portion of a court-ordered stipulated judgment and costs for infringement of copyright, and she started to increase her credit card limits in preparation for her expected March 2008 wedding. Account balances were increased with the anticipation of being able to pay them once she got married. For a variety of reasons, accounts became delinquent and were placed for collection, and some were charged off. Now there are additional delinquent non-SOR accounts. While she has submitted some documentation to support her contentions regarding payments supposedly made or accounts supposedly disputed, she has not done so for the remaining delinquent accounts. AG ¶¶ 19(a) and 19(c) apply.

⁸⁴ *Egan*, 484 U.S. at 531

⁸⁵ See Exec. Or. 10865 § 7.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Also, under AG ¶ 20(b), financial security concerns may be mitigated where “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.” Evidence 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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”⁸⁶ Also, AG ¶ 20(e) may apply where “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 current financial problems commenced in mid-2007. Because the financial situation is frequent and continuing in nature, AG ¶ 20(a) does not apply. Applicant’s significant inaction in the handling of her finances, under the circumstances, does cast doubt on her current reliability, trustworthiness, or good judgment.

Likewise, Applicant receives minimal application of AG ¶ 20(b), for Applicant has not documented evidence that the conditions that resulted in her financial problems at some point were largely beyond her control. She has noted the loss of her primary job in October 2007, her relatively brief period of unemployment until January 2008, and her broken engagement, but has not explained how they interfered with her handling of her finances. As she stated, she made a “conscious decision” to increase her credit limits. She drew unemployment compensation resulting from the loss of her primary job. Later, she received a rather limited salary from her part-time teaching position. And she made a substantial salary after being hired part-time by the government contractor in March 2009. Applicant failed to act responsibly under the circumstances. Instead, she became “overwhelmed by the debt” facing her, as well as depressed about her personal

⁸⁶ The Appeal Board has previously explained what constitutes a “good-faith” effort to repay overdue creditors or otherwise resolve debts:

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

(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)).

situation. Also, rather than seeking any reasonable job to help her reduce her financial delinquencies, she limited herself to seeking only socially significant jobs that make a difference and give back to the community. Rather than consolidating and minimizing expenses, or approaching creditors about her financial predicament and seeking repayment plans, she continued to spend unwisely.⁸⁷

AG ¶ 20(c) has very limited application because Applicant has not received financial counseling on debt management, loan consolidation, budgets, or repayment plans, but only very brief advice from a credit union loan officer on how to qualify for an automobile loan. She has not provided documentation to support any other conclusion.

AG ¶ 20(d) only partially applies because Applicant initiated a very limited good-faith effort to repay her creditors. She paid one non-SOR account (the \$158 evasion of fare charge in January 2010). She entered into two settlement and repayment plans before the SOR was issued, made monthly \$50 payments on one plan since May 2009, but never followed through with the agreement on the other plan. And, she settled one other account and paid it off in February 2010. Except for those payments, she ceased all other voluntary action. As for the other non-SOR accounts, after years of ignoring her delinquent student loans, she now finds herself too overworked to submit the proper paperwork to address them. Over the years, Applicant did not act aggressively, timely, or responsibly to resolve her delinquent debts. Instead, she has taken no significant actions to address the satisfaction of those delinquent debts.⁸⁸

AG ¶ 20(e) does not apply because, while Applicant might have a legitimate reason to dispute the accounts set forth in SOR ¶¶ 1.a. and 1.b., she has not provided “documented proof to substantiate the basis of the dispute.”

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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.

⁸⁷ “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. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

⁸⁸ The Appeal Board has previously held that “[A] applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim” he or she initiated a good-faith effort to repay creditors or otherwise resolve debts. ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004).

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), 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,” is potentially disqualifying. Also, under AG ¶ 16(b), “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative,” may raise security concerns. Similarly, under AG ¶ 16(e), “personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person’s personal, professional, or community standing. . . .” may raise security concerns.

Applicant’s omissions in her responses to inquiries in the e-QIP and DOHA interrogatories, of critical information pertaining to illegal substance abuse, provide sufficient evidence to examine if her submissions were deliberate falsifications, as alleged in the SOR, or were the result of simple oversight or negligence on her part, as she contends. Applicant repeatedly claimed she had a bad memory and omissions by her were caused either by that bad memory or by short suspenses. Yet, according to her professors, she had the ability to handle stressful situations and multiple tasks because she is hard working and efficient. During the hearing, her subsequent refinement of her explanations did not serve her well, for they offered alternative explanations. Either she could not remember the incidents or they took place over seven years ago. Nevertheless, as to her reasoning pertaining to SOR ¶ 2.b., other than her responses to the FBI employment application, there is no evidence to show that her marijuana use occurred within seven years, as no actual dates have been alleged, much less proven. Accordingly, there is no evidence that she deliberately omitted, concealed, or falsified the substance abuse information on her e-QIP.

The same cannot be said for her response to the DOHA interrogatory inquiring about ever having used illegal substances. Her explanations that she didn’t currently use marijuana, and she was too busy to fully read the question, convey the impression that she is unconcerned, unprepared to be candid, or deliberately evasive. I find Applicant’s explanations are not credible in her denial of deliberate falsification.⁸⁹ As to SOR ¶ 2.c., AG ¶¶ 16(a) and 16(b) have been established. Pertaining to the 2006 court-ordered stipulated judgment for infringement of copyright, on its face, AG ¶ 16(e) has been established.

⁸⁹ The Appeal Board has 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 guidelines also include examples of conditions that could mitigate security concerns arising from personal conduct. Under AG ¶ 17(c), evidence that “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,” is potentially mitigating. There is the 2006 court-ordered stipulated judgment for infringement of copyright, as well as Applicant’s explanation, supported by the statement of the individual who purportedly actually did the wrongful action. It is unclear as to when the actual wrongful action occurred, but it had to have taken place prior to 2006, meaning that at least four and probably more years have passed since the wrongful action took place. It was a one-time action, and occurred under such unique circumstances that it is unlikely to recur. Furthermore, in light of Applicant’s contention that she had instructed the other individual not to do what he had done, and his confirmation that she had done so, in this instance, the court-ordered stipulated judgment does not cast doubt on the Applicant’s reliability, trustworthiness, or good judgment. She receives the full application of AG ¶ 17(c). None of the other mitigating conditions apply.

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 31(a), “a single serious crime or multiple lesser offenses” is potentially disqualifying. Similarly, under AG ¶ 31(c), an “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted,” may raise security concerns. Applicant’s 2005 evasion of fare infraction does not qualify as a single serious crime and is not part of multiple lesser offenses. Accordingly, AG ¶ 31(a) does not apply. However, under the circumstances herein, AG ¶ 31(c) has been established. As noted above, the 2006 court-ordered stipulated judgment for infringement of copyright was merely a civil lawsuit filed by companies as plaintiffs, not a criminal matter prosecuted by the government before the court. Accordingly, as to that activity, the Government has failed to establish AG ¶¶ 31(a) or 31(c).

The guidelines also include examples of conditions that could mitigate security concerns arising from criminal conduct. Under AG ¶ 32(a), the disqualifying condition may be mitigated where “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.”

AG ¶ 32(a) applies to Applicant's 2005 evasion of fare. That infraction occurred five years ago, and has not been followed by further, more recent criminal conduct. Although there was a warrant issued for her, upon being reminded of the infraction and the warrant, she paid the fine in January 2010, and the matter is apparently resolved. Considering the isolated criminal conduct, and the five years since it occurred, I believe the time elapsed does satisfy the intent of AG ¶ 32(a).

Whole-Person Concept

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

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

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.

There is some evidence in favor of mitigating Applicant's conduct. Well after her finances got out of control, she initiated some belated good-faith efforts to address some SOR and non-SOR debts, but, with the exception of a few, ignored the remaining debts. She obtained some basic financial guidance from her credit union loan officer, but failed to follow through due to lack of funds and distractions caused by other activities. She was simply too busy to act on her financial delinquencies. Eventually, all of her efforts ceased, and have not resumed.

The disqualifying evidence under the whole-person concept is more substantial. Applicant continued to obtain services and goods from a variety of creditors, but had no ability to pay for them. While on a tight budget, she stretched her credit limits and incurred many wedding-related expenses. When she lost her primary job and went through three months of unemployment, and then broke off her engagement, she continued to accumulate delinquent debt. In November 2009, she had approximately \$20,726 in delinquent SOR debts and approximately \$55,000 in non-SOR delinquent student loans. Nevertheless, since acquiring another primary job in January 2008, and her part-time job with the federal contractor in March 2009, with the exceptions described above, Applicant did not make significant good-faith efforts to pay a variety of delinquent debts. While she ignored most of her creditors, she made a number of promises and claimed to have paid several creditors. Yet, there is insufficient

documentation to support her contentions that she had fully, or partially, satisfied some of the creditors. Her long-standing failure to repay creditors, at least in reasonable amounts, or to arrange payment plans, while creating new debts, reflects judgment traits which raise concerns about her fitness to hold a security clearance. And then there is her inability to focus on some of her debts because of limited opportunity to do so caused by working long hours, being on the road, making presentations, and teaching, and prioritizing those activities ahead of addressing her delinquent debts.

Of course, the issue is not simply whether all her debts are resolved or at least under repayment arrangements; it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. And there is the personal conduct surrounding the submission to DOHA of a false answer to an interrogatory pertaining to her past substance abuse and her omission of that substance abuse. I am mindful that while any one factor, considered in isolation, might put Applicant's credit history and personal conduct in a sympathetic light, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁹⁰ Her insufficient good-faith efforts or evidence to reflect actual payments to her SOR creditors, and her inability to satisfactorily explain her interrogatory response, are sufficient to raise continuing security concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁹¹

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 [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] 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 [or her] 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.

⁹⁰ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

⁹¹ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Although there are a few positive signs in Applicant’s favor, such as her efforts to take corrective actions, and her maintenance of some of her payments of her daily living expenses, these steps are simply insufficient to show she can “live within [her] means, satisfy debts, and meet financial obligations.” See AG ¶ 18. Moreover, the personal conduct issue raises questions about her honesty and trustworthiness. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from her personal conduct and financial considerations, but has mitigated the security concerns arising from the 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge