DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 09-05353
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

February 28, 2011

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant fell behind in some financial obligations due to unemployment and low income when she was working. As of January 2010, several consumer credit accounts were seriously delinquent, and she owed a deficiency balance on a loan for a timeshare that went to foreclosure. She has begun repaying her debts. But personal conduct and criminal conduct concerns persist because of a March 2007 larceny offense and her failure to disclose the larceny arrest and delinquent debts when she completed her security clearance application in March 2009. Clearance denied.

Statement of the Case

On January 27, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F, Financial Considerations, Guideline E, Personal Conduct, and Guideline J, Criminal Conduct, that provided the basis for its preliminary decision to deny her a security clearance. 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) effective within the Department of Defense on September 1, 2006.

Applicant submitted an incomplete response to the SOR on February 11, 2010, in that she answered the financial allegations (SOR 1.a–1.g) and SOR 2.a under Guideline E. In response to a request from DOHA of March 4, 2010, Applicant filed an undated answer in which she still did not indicate whether she wanted a hearing.[1] Yet, on April 30, 2010, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 17, 2010, I scheduled a hearing for June 8, 2010.

I convened the hearing as scheduled. Eight Government exhibits (Ex. 1-8) and two Applicant exhibits (Ex. A-B) were entered into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on June 18, 2010. At Applicant's request, I held the record open until July 6, 2010, for her to submit additional documents. Six additional documents were timely received and entered as exhibits (Ex. C-H) without objection.

Findings of Fact

The SOR alleged under Guideline F, Financial Considerations, that as of January 27, 2010, Applicant owed $16,195.07 in delinquent consumer credit debt (SOR 1.a–1.g), including a $9,189.07 deficiency balance of a foreclosed loan for a timeshare (SOR 1.a). Under Guideline E, Applicant allegedly falsified her March 2009 Electronic Questionnaire for Investigations Processing (e-QIP) by not disclosing that she had been arrested in September 2006 for riot, unlawful assembly, and risk of injury (SOR 2.a(1)), and in May 2007 for larceny (SOR 2.a(2)). Applicant was also alleged to have falsified her e-QIP by responding "No" to whether she had any property foreclosed (SOR 2.b), and to inquiries into any loan defaults, collection debts, credit card charge offs or cancellations, debts over 180 days delinquent, and debts currently over 90 days delinquent (SOR 2.c). The arrests (SOR 3.a) and falsification of her e-QIP (SOR 3.b) were cross-alleged under Guideline J, Criminal Conduct.

Applicant admitted that she had been arrested as alleged and had incurred the debts, but she was making monthly payments toward her delinquencies. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 41-year-old single mother with three daughters, two of college age and a five year old born in November 2005. (Ex. 2; Tr. 50, 56-57.) Applicant has been employed as a security guard by a defense contractor since March 2009 (Ex. 64.), and she seeks her first security clearance. (Ex. 2; Tr. 65.)

[1]The Government submitted as Exhibit 1 Applicant's undated response, which was received by DOHA on March 22, 2010. That document did not include a request for a hearing from Applicant. When asked whether she had otherwise requested a hearing, Applicant responded, "No, but they said because I didn't answer [on her supplemental answer] yes or no, then they automatically did a hearing." (Tr. 21.) Applicant agreed to proceed with a hearing, and she presented evidence on her behalf.

Around November 1999, Applicant left a full-time job, and she moved to a distant state with her then boyfriend. (Tr. 126.) Their relationship did not work out, and she returned in January 2000. Applicant was unemployed thereafter until September 2002. (Ex. 2; Tr. 62.) She and her then two children resided in public housing rent free, received food stamps for a time, and otherwise lived off the $327 received in child support per month for her oldest daughter. (Tr. 53-54, 62.)

From October 2002 to October 2005, Applicant worked in a succession of part-time jobs, including at a gas station. Following the birth of her youngest daughter in November 2005, Applicant did not return to even part-time work because she could not afford daycare. (Tr. 49, 55-56.) She was late 60 days three times in repaying a $23,603 car loan taken out in June 2000, but she paid off the loan in August 2005. (Ex. 6, 7.) Other debts were referred for collection (Ex. 6.), although she continued to receive child support for her eldest daughter until her daughter started college in 2007. (Tr. 63.)

In September 2006, Applicant's oldest daughter had a personal dispute with another high school student that evolved into a melee involving about 15 high school youth at Applicant's residence. (Tr. 36.) The police were called, and several of the teenagers were arrested, including Applicant's daughter. Applicant went to the police station to make a statement and to gain custody of her daughter only to be arrested herself for causing a riot, unlawful assembly, and risk of injury to a minor. The charges were dismissed with no finding of culpability after Applicant showed she had been trying to break up the fight.[2] (Ex. 3; Tr. 36-37, 118.)

In late May 2007, Applicant was arrested for larceny of party supplies worth between $65 and $100.[3] (Ex. 5.) According to Applicant, a store employee unknown to her offered to let her leave the store without paying for her items if she gave the employee $25. (Tr. 37.) Struggling financially and wanting a nice graduation party for her daughter, Applicant paid the store clerk $25 and left the store with party supplies without checking out at a register. Another employee observed Applicant leave the store without paying, and Applicant was arrested. A public defender arranged for the charge to be dismissed provided Applicant stayed away from the store for a period that she now recalls to be six months to a year. (Ex. 3; Tr. 41-45.)

In March 2009, Applicant began working for her current employer as a security guard at $13.73 an hour. (Tr. 56, 64.) On March 9, 2009, Applicant completed an e-QIP for a security clearance. She responded "No" to the police record inquiries, including 22.b, "Have you been arrested by any police officer, sheriff, marshal, or any other type of law enforcement officer?" Applicant also responded "No" on the e-QIP to all the financial record inquiries, including questions 28.b, "Have you had any possessions or property voluntarily or

[2] No court records were submitted that would show the disposition. Applicant testified that the September 2006 charges were thrown out ("annihilated"). (Tr. 40.)

[3] Applicant indicated during her background investigation for her security clearance that she had taken party supplies worth approximately $65 to $80 from the store, but the charge was nolled. (Ex. 3.) At her hearing, she testified she took graduation party supplies worth around $100. (Tr. 43.)

involuntarily repossessed or foreclosed?"; 28 e, "Have you had a judgment entered against you?"; 28.f, "Have you defaulted on any type of loan"; 28.g, "Have you had any bills or debts turned over to a collection agency?"; 28.h, "Have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?"; 28.m, "Have you been over 180 days delinquent on any debt(s)?"; and 28.n, "Are you currently over 90 days delinquent on any debt(s)?." (Ex. 2.) Yet Applicant had several financial accounts that were seriously past due, and she had defaulted on a mortgage for a timeshare taken out in February 2002 when she was unemployed. (Ex. 6; Tr. 75.) Applicant and her niece went on vacation together, and her niece talked her into buying a timeshare interest in a condominium on a golf course. Applicant recollects the timeshare may have cost as much as $27,000. The father of her eldest daughter helped her out with the payments initially, but she could not keep up with the payments. (Tr. 71-73.) The property went to foreclosure by December 2007 (Ex. 6.), but Applicant believed that an affirmative response was not required to question 28.b. She thought that in return for her payments, she acquired a right to rent the resort property for a vacation stay during odd numbered years. (Tr. 107-08.) That said, she knew she had stopped making payments on the loan so it should have been reported as a delinquent debt over 180 days past due. As for her failure to disclose the credit card delinquencies on her e-QIP, Applicant has no explanation other than she was excited about getting a job and she must have made an inadvertent error (that she either hit the wrong computer key or she skipped over pages when she reviewed her e-QIP). She admits she knew that she had three credit card accounts that had been closed due to nonpayment. (Tr. 108-12.) Concerning her failure to mention her arrests, Applicant now asserts that she was told that she would not be required to report the arrests on any job applications because "[she] didn't go to jail." (Ex. 3, Tr. 39-40, 115-16.)

A check of Applicant's credit on March 20, 2009, revealed several outstanding delinquencies in collection, a judgment against her that was paid in February 2007, and the timeshare loan that went to foreclosure. (Ex. 6.) The financial history of her delinquent accounts is set forth in the following table.

Debt	Delinquency history	Payment status
1.a. $9,189.07 deficiency balance for timeshare after auction	Timeshare loan taken out in Feb. 2002, to foreclosure for nonpayment Mar. 2006, $2,754 past due on $7,000 balance as of Dec. 2007. (Ex. 6.)	$100 payments Feb. 19, 2010 (Ex. B.) and Jun. 30, 2010. (Ex. D.)
1.b. $2,284 charged off credit card debt	Account opened Jan. 2002, $200 limit, last activity Feb. 2003, $2,284 past due as of Oct. 2009. (Ex. 6, 7.)	In debt management plan, $658 in total payments Nov. 2009-Jun. 2010. (Ex. C.)
1.c. $1,244 credit card debt in collection	$884 past due balance for collection May 2004, $1,244 past due as of Sep. 2009. (Ex. 6, 7.)	In debt management plan, $400 in total payments Nov. 2009-Jun. 2010. (Ex. C.)

1.d. $2,266 credit card debt in collection	Account opened Oct. 1996, $1,100 limit, last activity Jan. 2005, $2,196 past due balance in collection as of Mar. 2009, $2,266 past due as of Oct. 2009. (Ex. 6, 7.)	In debt management plan, $694.04 in total payments Nov. 2009-Jun. 2010. (Ex. C.)
1.e. $535 debt in collection	$535 debt for collection Jun. 2008; unpaid as of Feb. 2009. (Ex. 6.)	Not in debt management plan (Tr. 85.), $40.02 payment likely on this debt Jul. 2010. (Ex. F.)
1.f. $417 telephone (landline) debt in collection	Account opened Oct. 1993, last activity Feb. 2005, $417 in collection as of Feb. 2009. (Ex. 6.)	Satisfied through debt management plan Feb. 2010 with $417.96 payment. (Ex. C.)
1.g. $260 retail credit account in collection	Account opened Dec. 1999, last activity May 2004, $110 limit, $260 for collection as of Feb. 2009. (Ex. 6.)	In debt management plan, $80 total paid Nov. 2009-Jun. 2010. (Ex. C.)
$734 small claims judgment awarded credit card lender (not alleged in SOR)	Account opened Jul. 2001, $964 high credit, last activity Jan. 2005, $734 judgment filed Jun. 2006. (Ex. 6, 7, A.)	Paid judgment Feb. 2007. (Ex. 6.)

On April 7, 2009, Applicant was interviewed by a government investigator about her unlisted arrests. She told the investigator that she did not list them because she was not convicted and did not have an arrest record. (Ex. 3.)

On June 25, 2009, Applicant was interviewed by a government investigator about her debts. She acknowledged she had a credit card debt with a balance of about $1,000 in collection, and a timeshare loan that she claimed she "closed" when she could not afford the payments. She did not know the balance of that loan or recognize the other debts on her credit report, although she also did not refute the delinquencies. Applicant attributed her debts to lengthy unemployment and low-paying employment. She indicated her monthly discretionary income was about $627, and she would arrange to repay her delinquent debts, which she claimed had been inadvertently omitted from her e-QIP. (Ex. 3.)

On September 30, 2009, Applicant agreed to pay $324 monthly to a credit counseling company to resolve $7,817.85 of her debt in a debt management plan. She arranged for the $324 monthly payments to be automatically deducted from her checking account. (Ex. A.) Between November 2009 and June 2010, payments totaling $2,250 had been made to her creditors under the plan. (Ex. C.) The timeshare loan balance was not included in the plan. On February 19, 2010 (Ex. B.), and on June 30, 2010 (Ex. D.), Applicant made $100 payments on the timeshare loan. On July 2, 2010, she paid $40.02 on a debt in collection (possibly SOR 1.e).[4] (Ex. F.)

[4]Post-hearing submissions included a $40.02 payment by cashier's check in July 2010 (Ex. F.) to the creditor

As of July 2010, Applicant was relying on her timely receipt of child support of $328.38 every other week to meet her budget.[5] (Ex. H.) The child support is for her youngest daughter. (Tr. 93-94.) Her oldest daughter is in college with the cost paid for by the daughter's father (Tr. 135.), but Applicant helped out her niece by paying $281 in college tuition costs each month from September or October 2009 to June 2010. (Tr. 97-98, 105, 133.) Applicant's niece did not receive the same amount of aid that she had for her first year in college, and she could not afford to stay in school without Applicant's assistance. (Tr. 134-35.) Applicant has not had any financial counseling. (Tr. 102.) She has not opened any new credit card accounts in several years, including retail charge accounts, and has no active credit card accounts. (Ex. 8; Tr. 129.) Applicant fell behind in her utility bills (gas and electric) in 2009. As of June 2010, she was paying extra each month to catch up. (Tr. 131.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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originally owed the debt in SOR 1.e. The account number to which the check was payable does not match any of the account numbers listed on her credit reports, however.

[5]After her hearing, Applicant provided a financial statement showing $32.36 in monthly discretionary income based on a paycheck of $560.40 weekly and child support of $382.38 biweekly. Presuming a 40-hour work week, the $560.40 would appear to be her gross income. She had testified that her currently hourly wage is $14.01 (Tr. 56.), and her take-home pay was $460 per week. So while some of Applicant's expenses may vary from month to month, she clearly needs the child support to meet her obligations.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to 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. Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

> 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. Two are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant took on a loan of about $27,000 for a timeshare interest when she was unemployed (SOR 1.a). Not surprisingly, she could not afford to keep up with the payments on her part-time income, even with the financial help of her eldest daughter's father. The property was foreclosed on and auctioned by late December 2007, leaving her with a debt around $7,000.[6] Applicant was employed part time starting in October 2002, but she continued to struggle financially. She stopped paying on the revolving charge accounts identified in SOR 1.b and 1.c in 2003, and on the retail charge account in SOR 1.g in May 2004. In January 2005, a credit card lender charged off and placed for collection a $2,196 past due balance (SOR 1.d). A $417 telephone debt was referred for collection in February 2005 (SOR 1.f). A credit card debt (not alleged) went to judgment in 2006, when she was unemployed and caring for her infant daughter. Also, as of March 2009, Applicant reportedly

[6]The SOR alleged the balance of the loan to be $9,187.07. Applicant admitted the debt, although the available credit reports do not corroborate the balance. The loan is reported only on the March 2009 credit report as a foreclosure with a balance of $7,320 as of December 2007. (Ex. 6.)

owed $535 on a bank debt in collection since June 2008 (SOR 1. e). AG ¶19 (a) and ¶19(c) apply because of her failure to remain current on the aforesaid debts.

Five Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

> (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
>
> (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
>
> (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
>
> (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
>
> (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial problems are too recent to favorably consider AG ¶ 20(a). As of her March 2009 e-QIP, Applicant had taken no steps to resolve any of her old delinquencies. AG ¶ 20(b) applies in part in that low income was a significant cause of her falling behind in her payments, and she was not in a position to address her long overdue debts during her lengthy unemployment from October 2005 to March 2009. Her unemployment was voluntary in that she chose to stay at home to care for her daughter, so it was not an unforeseen circumstance contemplated within AG ¶ 20(b). At the same time, it is unclear whether she would have earned enough to cover daycare costs. Clearly, Applicant did not act reasonably in taking on the timeshare loan, and AG ¶ 20(b) does not mitigate that poor financial decision.

Applicant did not begin addressing her delinquent debts until after her June 2009 interview with a government investigator when she was confronted with the adverse information on her credit record. She had utility bills that had become delinquent when she was unemployed and they understandably took priority when it came to repayment. She also gave priority to her niece's need for tuition assistance, which is more difficult to justify. But she has shown good faith of late by enrolling in the debt management plan in late September 2009 and paying $324 monthly into the plan starting in November 2009. As of her hearing, the telephone debt had been paid in full and her credit card debt burden had

been reduced through payments totaling $2,250. Applicant has a credible plan in place to resolve all but the debts in SOR 1.a and 1.e. AG ¶ 20(d) applies in her favor.

With respect to the debt in SOR 1.e, Applicant testified that she intended to include that debt in her debt repayment plan, but the firm disbursing payments to her creditors was apparently unable to verify that debt. It is unclear whether AG ¶ 20(e) applies to that debt, given she paid $40.02 to the initial credit grantor named in SOR 1.e after her hearing. Concerning the timeshare loan, Applicant's March 2009 credit report shows that the creditor reclaimed the collateral to settle the defaulted mortgage, and the debt does not appear on subsequent credit reports. Applicant has nonetheless made two payments of $100 each toward the debt. She testified that the resort has offered to renew her membership in a different unit provided she keeps making payments. (Tr. 69.) It is unknown whether the creditor intends to pursue her for the entire deficiency balance, which could be in excess of $9,000 at this time. That said, it is undisputed that she defaulted on the loan.

Applicant has not had an active credit card account in several years, which is a positive change in her financial habits. Yet she has not had any financial counseling, and recent utility delinquencies indicate ongoing financial issues. AG ¶ 20(c) has only limited applicability in this case. But she is likely to continue to make her payments under the debt resolution plan and she understands that she exercised poor judgment in buying the timeshare when she did. The financial concerns are mitigated by her good-faith efforts to resolve her debts. However, this case is not only about her finances.

Guideline E, Personal Conduct

Applicant did not disclose her arrest record on her e-QIP. Nor did she disclose that she had serious credit delinquencies, despite her awareness of outstanding past due credit card balances and of her default on the timeshare loan. Applicant appeared in court on the September 2006 charges, but they were dismissed without any finding or admission of culpability on her part. Applicant testified, without evidence to the contrary, that she had demonstrated to the court that she was just trying to break up the fight. Under those circumstances, Applicant could reasonably hold a good-faith, albeit mistaken, belief that she was not required to disclose her arrest for riot, unlawful assembly, and risk of injury on her security clearance application. The omission of the larceny charge is more difficult to mitigate. While it was nolled or dismissed, she was ordered to stay away from the store, and she knew that she had taken the party supplies without paying for them. When she was interviewed in April 2009, she told a government investigator that she did not admit the arrests because she was not convicted and did not have an arrest record. Her testimony that she was told by a public defender that she would not have to disclose the arrests on any job application (Tr. 116.) is uncorroborated. Question 22.b of the e-QIP is unambiguous in asking whether she had been arrested within the time frame covered by the inquiry, which in her case was since March 2002. It does not ask only about convictions. In light of the written direction to disclose even dismissed charges, Applicant would have had reason to question the validity of any advice that she need not report her arrests, especially for larceny where she acknowledges her culpability.

Furthermore, had Applicant acted in a spirit of full disclosure, she would have at a minimum responded affirmatively to questions 26.m (over 180 days delinquent on any debts) and 26.n (currently over 90 days delinquent on any debts). Even if she did not know that her credit card accounts had been referred for collection, she knew that she had not made any payments on them for several years. Similarly, she admitted that she had received a notice of foreclosure of the timeshare, although she claims it was "not too long ago." Given the foreclosure and reclamation by the creditor occurred well before March 2009, she had to have known of the foreclosure before her e-QIP. She received documentation about the foreclosure from the court. The debt should have been reported in response to questions 26.m and 26.n, whether or not she misunderstood whether the foreclosure required an affirmative response to question 26.b. Her claim that the omission of debts was inadvertent is not credible based on the facts. AG ¶ 16(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") applies because of her false responses to the pertinent arrest and debt inquiries.

None of the mitigating conditions are satisfied. There is no indication that Applicant informed the Government of her arrests or her delinquent debts before her interviews wherein she was confronted with the information. AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," is not established. Assuming that Applicant had been advised that she need not report her arrests on any job applications, AG ¶ 17(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 specifically concerning the security clearance process," would still not be met. There is no evidence that Applicant was told she did not have to report the information on her security clearance application. As noted under Guideline J, *infra*, falsification of the security clearance application is a serious offense, and her March 2009 e-QIP omissions were relatively recent. So AG ¶ 17(c), "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," is also not implicated.

Finally, when asked at her hearing about her omission of the debt information from her e-QIP, Applicant had no explanation other than that she must have made an inadvertent mistake, like pushing a wrong computer key. Applicant responded "No" to all the financial inquiries, so she would have had to have repeated her "mistake" if she is to be believed. Instead, the more likely scenario is that Applicant did not want to disclose facts that could jeopardize the clearance she needs for her employment. Her failure to acknowledge the intentional nature of her behavior precludes me from favorably considering AG ¶ 17(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." She has yet to show sufficient reform of the personal conduct concerns raised by her false statements on her e-QIP.

Guideline J, Criminal Conduct

The security concern about criminal conduct is set out in Guideline J, 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.

As previously noted, Applicant was arrested in September 2006 for causing a riot, unlawful assembly, and risk of injury, and in May 2007 for larceny. AG ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted," must be considered, despite the legal dismissal of the charges. Furthermore, by signing the e-QIP, Applicant certified that her statements on the form were "true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith." She was put on notice that a knowing and willful false statement on the form could be punished by a fine or imprisonment or both under 18 U.S.C. § 1001. Her knowing omission of relevant arrest and debt information from her e-QIP also raises concerns under AG ¶ 31(c).

Mitigating condition AG ¶ 32(a), "so much times 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," is not satisfied because of her relatively recent e-QIP falsifications. AG ¶ 32(c), "evidence that the person did not commit the offense," has limited applicability only to the September 2006 incident. Applicant did not incite the fighting that took place at her residence. Nor did she intend harm to the teenagers that became involved in the melee. Applicant's defense contractor employment is some evidence of reform under AG ¶ 32(d), "there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement." More than three years have passed since the May 2007 larceny. But Applicant was also dishonest when she completed her e-QIP in March 2009, and such behavior is clearly incompatible with a security clearance. The criminal conduct concerns are not fully mitigated without a meaningful acknowledgement of responsibility and expression of appropriate remorse for her e-QIP falsifications, although she is remorseful for her shoplifting.

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 her conduct and all relevant circumstances in light of 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.

Applicant takes her parental responsibilities seriously. She helped out her niece financially so her niece can remain in college. But she allowed her desire to give her daughter a nice graduation party to override her good judgment when she shoplifted the party supplies. Similarly, while I can appreciate her need for a steady income to support her family, it does not justify her failure to be completely candid about her arrest record and financial delinquencies on her e-QIP. Applicant's conduct raises serious doubts about her judgment, reliability, and trustworthiness that are not adequately mitigated. Based on the information before me, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance at this time.

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a(1):	For Applicant
Subparagraph 2.a(2):	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant

Conclusion

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

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Elizabeth M. Matchinski
Administrative Judge