



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



In the matter of:)
)
-----) ISCR Case No. 09-05989
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

November 30, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to disclose her financial problems on her April 27, 2009 security clearance application; however, she did not intend to deceive the Government. Personal conduct concerns are mitigated. Her statement of reasons (SOR) lists nine delinquent debts totaling \$28,093. She failed to make sufficient progress resolving her SOR debts, and financial considerations concerns are not mitigated at this time. Eligibility for access to classified information is denied.

Statement of the Case

On April 27, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On April 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guidelines F (financial considerations) and E (personal conduct). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked (HE 2).

On April 18, 2010, Applicant responded to the SOR and requested a hearing. (HE 3) On August 23, 2010, Department Counsel indicated she was ready to proceed on Applicant's case. On August 25, 2010, DOHA assigned Applicant's case to me. On September 22, 2010, DOHA issued a hearing notice. (HE 1) On October 19, 2010, Applicant's hearing was held. At the hearing, Department Counsel offered four exhibits (GE 1-4) (Tr. 17), and Applicant offered seven exhibits. (Tr. 17, 19-21; AE A-G) There were no objections, and I admitted GE 1-4 and AE A-G. (Tr. 17, 21) Additionally, I admitted the hearing notice, SOR, and Applicant's response to the SOR as hearing exhibits. (HE 1-3) On October 27, 2010, I received the transcript. I held the record open until November 18, 2010. (Tr. 71-72) On November 24, 2010, I received five additional exhibits. (AE H-L) There were no objections to Applicant's post-hearing exhibits, and I admitted them into evidence.

Findings of Fact¹

Applicant's SOR response admitted eight of the nine SOR debts. She admitted SOR ¶¶ 1.a to 1.f, 1.h, 1.i, and 2.a. (HE 3) She denied the allegation in SOR ¶ 1.g. Her admissions are accepted as factual findings.

Applicant is 28-year-old property management specialist employed by a government contractor. (Tr. 6, 24) She earned a high school diploma in 2000. (Tr. 6) She has completed some college classes. (Tr. 7) She served in the Army from July 2000 to July 1, 2007, and her military occupational specialty was supply specialist. (Tr. 7; AE A)

When Applicant left active duty, she was a sergeant (E-5), and she received an honorable discharge. (Tr. 7; AE A) She also received severance pay of \$9,643. (Tr. 67; AE A) After taxes were withheld, her severance pay was reduced to \$6,000. (Tr. 67) She married in July 2004, and was divorced in January 2009. (AE G at 1) There was one child from their marriage, who is four years old. (Tr. 23) Applicant has custody, and since July 2009, she has been receiving \$350 per month in child support from her former husband. (Tr. 23, 51) Her former husband is on active duty in the Army. (Tr. 24)

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Financial Considerations

Applicant admitted that she and her husband lived beyond their means when she moved from Korea to the United States. (Tr. 59) For example, they purchased two cars and a motorcycle and shopped a lot. (Tr. 59-61) Up to the time of her hearing, she had not made any payments to any of her SOR creditors. (Tr. 66)

Applicant's SOR listed nine debts totaling \$28,093. The status of her nine SOR debts is as follows:

1.a (judgment to department store—\$769)—UNRESOLVED. Applicant purchased rims for her vehicle at the department store, which generated the unpaid debt. (Tr. 29-31; AE F at 2) She called the phone number of the creditor listed on the creditor's website; however, the phone number she called was not valid.

1.b (communications collection debt—\$557)—PAYMENT PLAN. At her hearing, Applicant said she plans to pay \$278.50 on October 22, 2010, and \$278.50 on November 5, 2010, resolving the debt. (Tr. 31-33; AE F at 2) Her post-hearing budget showed that she planned to make her final payment on December 5, 2010. (AE H)

1.c (collection debt—\$633)—UNRESOLVED. Applicant obtained a payday loan; however, when she was ready to repay the debt, she learned the account had been moved to a different collection agent. (Tr. 33-35) She was unable to contact the new holder of the debt. (Tr. 35)

1.d (\$84 overdue on account—\$772)—PAYMENT PLAN. Applicant owes \$1,430 to the creditor. She plans to pay \$121.36 every two weeks for six months to resolve the debt, with her first payment being made on November 19, 2010. (Tr. 36-39; AE F at 2) After her hearing, she provided a November 8, 2010 letter from the creditor indicating her post-dated check for \$121.36 would be deposited on November 19, 2010. (AE J)

1.e (communications collection account—\$1,479)—UNRESOLVED. The creditor offered to settle the debt for \$800 if paid by December 31, 2010. (Tr. 39-40; AE F at 2) She believes she will have sufficient funds to make the one-time \$800 payment. (Tr. 39-40)

1.f (communications collection account—\$346)—PAYMENT PLAN. Applicant agreed to pay \$178.91 on November 19, 2010, and \$178.91 on December 5, 2010. (Tr. 40-41; AE F at 2) After her hearing, she provided a checking account statement showing a \$178.91 payment on November 8, 2010. (AE I)

1.g (collection debt—\$910)—NOT ESTABLISHED. Applicant telephoned the creditor and asked for information about the debt; however, the creditor was unable to obtain proof that she owed the debt. (Tr. 44) She did not provide documentation showing she disputed the account.

1.h (vehicle collection debt—\$17,133)—UNRESOLVED. Applicant and her former spouse purchased a vehicle together that was repossessed. (Tr. 44) They made a settlement offer of \$9,000, with an initial payment of \$4,500, followed by monthly payments; however, their offer was rejected. (Tr. 44-49; AE F at 2) The creditor is now seeking \$22,000, and the creditor is willing to accept a payment plan. (Tr. 45) Her former husband refuses to make any payments on the debt. (Tr. 47-48) She did not indicate that she agreed to start making payments under the creditor's proposed payment plan.

1.i (collection debt—\$6,182)—UNRESOLVED. Applicant and her former husband borrowed the money, and did not repay the debt. (Tr. 50) She has not contacted the creditor, and the debt remains unpaid. (Tr. 50)

In November 2009, Applicant purchased a Ford Explorer. (Tr. 62) Her monthly payment is \$597. (Tr. 62) The account is current. (Tr. 62) She considered obtaining financial counseling; however, she did not actually obtain financial counseling. (Tr. 65-66) After her hearing, she provided an updated budget. (AE H) Her budget showed she planned to make payments to the creditors in SOR ¶¶ 1.b, 1.d, and 1.f. (AE H)

On June 10, 2009, an Office of Personnel Management (OPM) investigator interviewed Applicant about her delinquent debts. (GE 2) Applicant admitted that she and her husband spent frivolously. (GE 2) They began to fall behind on their debts because they were transferred to a location where the housing allowance was much less. (GE 2) After Applicant was discharged from the Army in July 2007, she was unemployed for two months. (GE 2) Applicant plans to pay her debts. (GE 2)

At her hearing, Applicant promised to provide proof of any payments made prior to November 18, 2010. (Tr. 71) After her hearing, Applicant provided proof that she made one \$178.91 payment to the creditor in SOR ¶ 1.f on November 8, 2010. (AE I) I also credit her with making a \$121 payment on the debt in SOR ¶ 1.d. Her November 18, 2010 credit report provided contained additional financial information as follows: (1) A \$3,000 Government overpayment collection debt is owed to Veterans Affairs. (AE L at 10); (2) The debt in SOR ¶ 1.g has increased to \$1,501. (AE L at 12); (3) Her student loans are in current status (AE L at 15, 16); and (4) Several entries showed note loans and automobile loans paid satisfactorily. (AE L at 17-19)

Falsification of security clearance application

On April 27, 2009, Applicant completed her SF 86. Section 26 asks a series of questions concerning adverse financial information. The first four questions are limited to the last seven years, and all five questions are relevant to Applicant's disclosure of her financial circumstances to the Government:

26e. Have you had a judgment entered against you?

26g. Have you had any bills or debts turned over to a collection agency?

26h. Have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?

26m. Have you been over 180 days delinquent on any debt(s)? and

26n. Are you currently delinquent over 90 days on any debt(s)?

Applicant answered, “No” to all five questions and did not disclose any adverse financial information. When she was completing her SF 86, she tried to put “Yes” on her SF 86; however, the electronic SF 86 would not allow her to complete the form unless she specifically listed some delinquent debts, and she did not know the specific information needed to complete her SF 86. (Tr. 53) She knew, for example, that they stopped making payments on a vehicle and it was repossessed. (Tr. 54) She did not seek help or advice on completion of her SF 86. (Tr. 53) Applicant was aware of her delinquent debt. She knew the Government was going to find out about her delinquent debt because she was aware that the Government obtains a credit report as part of the clearance investigation. (Tr. 52, 54)

Character references

Applicant’s supervisor, who is a senior master supply technician, wrote that he has supervised Applicant for more than one year. (AE B, K) Applicant is responsible for \$35 million in government property. (Tr. 25; AE B, E, K) Applicant “maintained 100% accountability of all assets without loss to the government.” (AE B, K) She is talented, knowledgeable, and proficient. (AE B, K) He recommends approval of her security clearance “so that she can continue to do great things for the military and our country.” (AE B, K)

Another of Applicant’s co-workers, who is a master supply technician, lauded her initiative, intelligence, resourcefulness, creativity, diligence, commitment, expertise, communications skills, and effectiveness. (AE C) He opined that Applicant will be a tremendous asset to any organization. (AE C)

While Applicant was on active duty in the Army, she earned an Army Commendation Medal, two Army Achievement Medals, two Army Good Conduct Medals, a National Defense Service Medal, a Global War on Terrorism Service Medal, a Korea Defense Service Medal, a Noncommissioned Officer Professional Development Ribbon, and an Army Service Ribbon. (AE A) She also successfully completed various training courses. Applicant provided her NCO Evaluation Report (NCOER) for the period September 2005 to May 2006. (AE D) Her NCOER showed her excellent duty performance. (AE D)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v.*

Egan, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s 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 revised adjudicative guidelines. 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 “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. See *also* Executive Order 12968 (Aug. 2, 1995), § 3.1. 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 about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (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. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No.

02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines F (financial considerations) and E (personal conduct).

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in her credit reports, her OPM personal subject interview (PSI), and her statement at her hearing. Applicant’s SOR lists nine delinquent debts totaling \$28,093. Some of her debts have been delinquent for more than two years. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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 conduct in resolving her debts warrants partial application of AG ¶¶ 20(b), 20(c), and 20(d).² Although Applicant did not receive financial counseling, she generated several budgets and her knowledge of supply procedures gives her a good understanding of the requirements to maintain a budget and pay her debts. She showed some good faith when she admitted responsibility for eight of nine SOR debts. Applicant's financial situation was damaged by insufficient income, a brief period of unemployment in 2007, divorce, delay after her divorce in her receipt of child support payments, and her spouse's financial irresponsibility. However, her financial circumstances have been stable from July 2009 because she was employed without any periods of unemployment and was receiving child support.

Applicant did not establish that she acted responsibly under the circumstances. She received about \$9,643 severance pay before taxes when she left active duty, which compensated for her two months of unemployment following her discharge. She admitted that she spent frivolously or excessively. She did not maintain contact with all

²The 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) 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)).

of her creditors.³ Prior to her hearing, she did not make any payments to her SOR creditors. After her hearing, she made one \$121 payment to the creditor in SOR ¶ 1.d and one \$178 payment to the creditor in SOR ¶ 1.f. Her financial problem is not being resolved and is not under control because over the last 12 months her SOR debts are increasing faster than they are being paid.

I have credited Applicant with refuting the allegation in SOR ¶ 1.g. The only evidence of this debt is her credit report. She accepted responsibility for the other eight SOR debts and credibly denied responsibility for the debt in SOR ¶ 1.g. In sum, Applicant's efforts are insufficient to fully mitigate financial considerations security concerns.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying with respect to the alleged falsification of her SF 86 on April 27, 2009, in this case:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.⁴

³“Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

⁴The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

- (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove

Applicant admitted that on her April 27, 2009 SF 86, she failed to disclose debts that were currently delinquent more than 90 days. As to the last seven years, she failed to disclose: (1) debts that were delinquent more than 180 days; (2) a judgment entered against her; (3) bills or debts turned over to a collection agency; and (4) any of her accounts or credit cards suspended, charged off, or cancelled for failing to pay as agreed. Applicant contended that her inaccurate answers were not deliberate and intentional attempts to deceive the Government.

When Applicant completed her SF 86, she attempted to answer “yes” to the questions about her delinquent debts; however, the SF 86 computer program will not accept a “yes” answer without the Applicant providing details about delinquent debts. She knew that the Government would receive the delinquent debt information anyway from her credit reports. When Applicant had her OPM PSI, she discussed her debts and other financial information in detail. I find the allegation in SOR ¶ 2.a is unsubstantiated because Applicant did not deliberately intend to provide false information to deceive the Government about her past due debts.

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.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the

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.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). *See also* ISCR Case No. 08-05637 at 3 (App. Bd. Sept. 9, 2010) (noting an applicant’s level of education and other experiences are part of entirety-of-the-record evaluation as to whether a failure to disclose past-due debts on a security clearance application was deliberate).

guidelines and the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of her access to classified information. Applicant is 28 years old. She is sufficiently mature to understand and comply with her security responsibilities. She deserves substantial credit for volunteering to support the U.S. Government as an employee of a contractor and during her seven years of active duty Army service. She earned several military awards, successfully completed some military courses, rose to the grade of sergeant (E-5), received an excellent NCOER, and received an honorable discharge from the Army. There is every indication that she is loyal to the United States and her employer. There is no evidence that she abuses alcohol or uses illegal drugs. Her divorce, her unemployment, the delay in her receipt of child support payments, and problems with her spouse's handling of their finances contributed to her financial woes. Two character witnesses laud her diligence, professionalism, and responsibility. I give Applicant substantial credit for admitting responsibility for eight of her nine SOR debts totaling about \$28,000, and being honest to the OPM investigator about her financial plight. These factors show some responsibility, rehabilitation, and mitigation.

The whole-person factors against reinstatement of Applicant's clearance are more substantial at this time. Applicant's SOR listed nine delinquent debts totaling \$28,093. She denied the debt in SOR ¶ 1.g (\$910). I have credited her with having payment plans on the debts on SOR ¶¶ 1.b (\$557), 1.d (\$772), and 1.f (\$346), even though she only provided proof of one \$121 payment on the debt in SOR ¶ 1.d and one \$178 payment on the debt in SOR ¶ 1.f (\$346). Her financial situation has deteriorated somewhat since the SOR was issued. For example, the debt in SOR ¶ 1.d went from \$772 to \$1,430, and the debt in SOR ¶ 1.h went from \$17,133 to \$22,000. Although there is also the possibility that she has a new debt to Veteran's Affairs for a \$3,000 overpayment, I decline to consider this possible new debt in this case as adverse financial information.⁵ Applicant has failed to make sufficient progress resolving her delinquent SOR debts.

⁵The SOR did not allege that Applicant failed to pay the Veterans Affairs overpayment of \$3,000. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I decline to consider the non-SOR misconduct for any purpose because Applicant did not have an opportunity to address this debt at her hearing, and did not discuss it in her post-hearing documentation.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations concerns are not mitigated; however, personal conduct concerns are mitigated. Eligibility for access to classified information is denied.

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:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f and 1.g:	For Applicant
Subparagraphs 1.h and 1.i:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

MARK HARVEY
Administrative Judge