



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-06277
	)	
Applicant for Security Clearance	)	

**Appearances**

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

March 28, 2011

**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant incurred delinquent debt starting in 2007 after being granted a Chapter 7 bankruptcy discharge in 1999. She has begun repaying her past-due debts, but it is too soon to conclude that her financial problems are behind her. Personal conduct concerns persist because of her false response to the bankruptcy inquiry on a January 2005 security clearance application (SF 86) and her omission of any delinquent debt when she applied for a clearance for her current job in June 2009. Clearance denied.

**Statement of the Case**

On March 25, 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, and Guideline E, Personal Conduct, which 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 answered the SOR on April 16, 2010, and requested a hearing. On June 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 July 2, 2010, I scheduled a hearing for July 21, 2010.

I convened the hearing as scheduled. Before the introduction of any evidence, the SOR was amended on motion of Department Counsel and without objection to allege in SOR 2.a through 2.d that Applicant falsified a Questionnaire for National Positions (QNSP) dated June 1, 2009 (vice June 10, 2009), and to allege in SOR 2.e through 2.g that Applicant falsified a Security Clearance Application (SF 86) dated January 7, 2005 (vice January 13, 2005). Eight Government exhibits (Ex. 1-8) were admitted. Applicant expressed concerns about the relevance of the charges reflected in Exhibit 8, a criminal history record, given her probation was terminated and she was discharged. The exhibit was accepted over Applicant's objection as it was relevant to the falsification allegations in SOR 2.d and 2.g. Three Applicant exhibits (Ex. A-C) were entered into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on July 30, 2010.

At Applicant's request, I held the record open until August 4, 2010, for her to submit additional documents. Six additional documents were timely received and entered as exhibits (Ex. D-I) without objection.

### **Findings of Fact**

The SOR as amended alleges under Guideline F, Financial Considerations, that as of March 25, 2010, Applicant owed \$15,238 in delinquent consumer credit debt (SOR 1.a–1.f) after a September 1999 bankruptcy discharge (SOR 1.g). Under Guideline E, Applicant allegedly falsified her June 1, 2009 QNSP<sup>1</sup> by not disclosing that she had been over 180 days delinquent on any debts in the last seven years and that she was currently over 90 days delinquent on any debts (SOR 2.a); that any of her debts had been turned over for collection (SOR 2.b); that any of her accounts or credit cards had been charged off or cancelled for failing to pay as agreed (SOR 2.c); and that she had been charged with felony assault and battery in September 1997 (SOR 2.d). Applicant was also alleged to have falsified her January 7, 2005 SF 86 by not disclosing her Chapter 7 bankruptcy filing (SOR 2.e); that she had been over 180 days delinquent on any debts in the seven years preceding her SF 86 and that she was 90 days delinquent on debts as of her SF 86 (SOR 2.f); and that she had been arrested and convicted of the September 1997 felony assault and battery in response to any felony arrests and any arrests within the preceding seven years (SOR 2.g).

Applicant admitted the bankruptcy and the debts alleged with the exception of SOR 1.b, about which she lacked information. Repayment arrangements had been made for the debts in SOR 1.a, 1.c, and 1.f. Concerning the alleged falsifications of her e-QIP and SF 86 forms, Applicant indicated that she did not have the information in her possession at the

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<sup>1</sup> The QNSP is incorporated in an Electronic Questionnaire for Investigations Processing (e-QIP) signed by Applicant on June 1, 2009.

time that she completed her e-QIP, although she also admitted that she “made a mistake” by not disclosing the extent of her credit card delinquencies (SOR 2.a and 2.f), including not indicating that accounts had gone to collection (SOR 2.b). She attributed her failure to disclose any cancelled or charged off accounts to mail getting lost or not being forwarded in time when she moved (SOR 2.c). Applicant averred that she answered the criminal record inquiries on her e-QIP (SOR 2.d) and SF 86 (SOR 2.g) accurately because she had no charges against her when she completed the forms and her arrest was not within the seven-year scope of the 2005 SF 86. She indicated that her bankruptcy had been discharged over ten years ago (SOR 2.e).

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 49-year-old security guard, who has worked as a line officer at the same facility since February 2007. In March 2008, she became employed by an offsite defense contractor, and she requires a security clearance for her duties. (Ex. 1.)

Applicant married her first husband in April 1981. In September 1981, she entered active duty in the U.S. Air Force, and she and her husband had a son born abroad in September 1982. Applicant was discharged from the military two months later. (Ex. 2.) In November 1983, she and her first husband divorced, and he died in August 1984. (Ex. 1, 2.) Applicant entered into a second marriage that also ended in divorce.<sup>2</sup> (Ex. 1, 2.) After her divorce, Applicant held low-paying jobs. She relied heavily on credit cards to meet some expenses, such as food and toys. (Ex. 3.)

In September 1997, Applicant was charged with felony assault and battery with a dangerous weapon (a stick), and with assault and battery on a household member (her son). In late August 1997, she and her then boyfriend had lost their tempers with her son, who has special needs, and she struck him with a stick. (Ex. 3.) Applicant’s mother, who lived in a nearby apartment, noticed that her grandson had bruising on his buttocks and she contacted the police. The state awarded temporary custody of Applicant’s son to his grandmother. In December 1997, Applicant admitted sufficient facts on both charges. Her case was continued without a finding until December 3, 1999, on the conditions that she complete parenting classes with the state’s department of social services (DSS), and comply with DSS’ terms for visitation. On December 6, 1999, she was discharged from probation, and the charges were dismissed. (Ex. 3, 8, A.)

Around April 1998, Applicant incurred joint liability for an auto loan of \$30,530. The loan payments were not made on time, and the vehicle was repossessed leaving a deficiency balance of \$25,101. (Ex. 5.) By 1999, Applicant could no longer manage her credit card debt. In May 1999, she filed a Chapter 7 bankruptcy, listing credit card debt. She was granted a discharge in September 1999. Applicant believes that the car debt may well have been included in her bankruptcy, although it was listed as delinquent as of November 2000 on a February 2005 credit report. (Ex. 3, 5.)

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<sup>2</sup>Applicant provided discrepant information about the dates of her second marriage. She indicated on her January 2005 SF 86 that she was married in July 1986 and divorced in June 1993. (Ex. 2.) On her June 2009 e-QIP, she provided estimated dates for her second marriage, from July 1984 to June 1987. (Ex. 1.)

Applicant worked as an assembler/solderer until June 2001, when she was laid off from the technology company where she had been working for the past two years. (Ex. 1, 2.) She enrolled in a local community college while working as a cashier for a supermarket. (Ex. 1.) Over the next few years, she opened several credit card accounts with low limits to reestablish her credit. (Ex. 5.) In June 2003, she stopped attending classes. In September 2003, she started working as a security officer at an office park. (Ex. 1, 2.)

In June 2004, Applicant and her son began cohabitating with family members to reduce her living expenses. (Ex. 1, 2, 3.) In January 2005, Applicant applied for work as a security guard/officer for a defense contractor. She signed an SF 86 on January 7, 2005, on which she responded "NO" to the police record inquiries, including question 21, "Have you ever been charged with or convicted of any felony offense?," and 26, "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25?." Applicant also answered "NO" to the financial record questions, including 33, "In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)?," 38, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?," and 39, "Are you currently over 90 days delinquent on any debt(s)?." (Ex. 2.)

A check of Applicant's credit on February 8, 2005, revealed the 1999 bankruptcy discharge and vehicle repossession debt. A revolving charge account opened in September 1995 had been closed and transferred, but with no balance due and other debts had been paid off satisfactorily. Applicant was making timely payments of \$187 per month on a car loan of \$11,283 that she had taken out in July 2004, and on two credit card accounts that had outstanding balances of \$371 and \$662. (Ex. 5.)

Applicant continued to work full-time as a security guard at the office complex. In September 2005, she began supplementing her income through weekend hours (16 hours per week) for the defense contractor. In January 2006, Applicant resigned from her full-time job because she thought she had another position lined up, but it fell through. (Ex. 3.) She netted only \$121.61 per week from her part-time job with the defense contractor as of February 2006, but she was able to cover living expenses for herself and her son for that month because of his social security benefit. (Ex. 3.)

On February 9, 2006, Applicant was interviewed by a Government investigator about her arrest and her finances. She attributed her omission of her arrest from her January 2005 SF 86 to not recalling the specific charges filed against her in 1997, not knowing that she had been charged with a felony offense, and she may not have read the questions on her SF 86 thoroughly. As for her finances, Applicant acknowledged that she had filed for bankruptcy in 1999 because of credit card debt that she incurred for necessities due to her low income. Concerning the repossession debt, Applicant indicated that she and her ex-husband had two cars repossessed long before her bankruptcy and that the \$25,101 debt may have been included in her bankruptcy. She indicated she had not heard from the creditor in the past decade. Applicant indicated that she did not list either the bankruptcy or repossession debt on her SF 86 because she thought they had happened over seven years ago. Applicant indicated in hindsight she should have kept a closer eye on her discretionary

spending. She asserted that she was presently living within her means despite her recent resignation from her full-time job. She expected to pay her monthly expenses of \$1,159 for March 2006 with her income tax refund. Applicant estimated that she had outstanding credit card balances totaling \$4,100. Around December 2005, she cosigned on a cellular phone account for her niece, who ran up \$1,900 in charges that were unpaid. (Ex. 3.)

From April 2006 to February 2007, Applicant worked as a cashier for a wholesale club. In September 2006, Applicant and her mother both cosigned on a student loan of \$12,409 for Applicant's niece's education. Repayment of the loan was deferred while her niece was in school. (Ex. 6, D.) In February 2007, Applicant began full-time employment as a security guard/officer at her present duty location. (Ex. 1.) She made monthly payments on a credit card account opened in October 2005 with a credit limit of \$6,000, and a balance of \$3,145 as of May 2009. Yet over the next two years, some of her credit accounts became seriously delinquent, as set forth in the following table.

Debt in SOR	Delinquency history	Payment status
\$4,528 credit card debt in collection (SOR 1.a)	Account opened Sep. 2005, \$4,093 high credit, used for gas for her car at least once a week for over a year (Tr. 42.), last activity Sep. 2007 (Ex. 4.); \$4,192 for collection Apr. 2008, balance \$4,467 as of Jun. 2009. (Ex. 6.)	Contacted by collection agency around Jul. 2009 (Ex. 4.), as of Dec. 2009, arranged for \$75 payments per month by automatic debit on balance \$4,041.99 (Ex. C.); \$3,956 balance as of May 2010. (Ex. 7.)
\$2,050 credit card debt charged off (SOR 1.b)	Account opened Oct. 2006, last activity Jun. 2007; \$1,500 limit, \$2,050 high credit, \$2,014 balance charged off and sold for collection Mar. 2009 (Ex. 4, 6.), balances \$2,791 Oct. 2009 (Ex. 4.), \$2,747 Jun. 2010. (Ex. 7.)	Arranged to pay \$50 per month after Jul. 2009 (Ex. 4.), paid \$50 on Mar. 2, 2010 to bring balance to \$3,007.56 (Ex. B.); paid \$100 Jul. 13, 2010 to bring balance to \$2,876.12. (Ex. F, I.)
\$2,107 credit card debt charged off (SOR 1.c)	Account opened May 2002, \$750 credit limit, \$2,107 high credit, last activity Jun. 2007, charged off (Ex. 4, 6, 7.); for collection with agency in SOR 1.d in Jan. 2008, <sup>3</sup>	Payments when able, collection agency contacted her after Jul. 2009 interview (Ex. 4; Tr. 61.), began paying \$40 per month as of Sep. 26, 2009 (Ex. 4; Tr. 61.); in

<sup>3</sup> The Government alleged two separate credit card debts with the same bank (SOR 1.c and 1.d) because of different account numbers. Applicant recalls only one credit card account with the lender. (Ex. 4.) The evidence tends to indicate that SOR 1.c and 1.d pertain to the same debt (originally account xxxxxxxx0295) in good standing as of December 2004, but then placed for collection with agency X. As of June 2009, the account (xxxx0295xxxx) was reported as transferred and in collection with a zero balance. Agency X was reporting a debt from the bank in collection with a balance of \$1,662, under account number x4149. (Ex. 6.) As of October 2009, Experian (xxxxxxxx0295xxxx) and Equifax (xxxx0295xxxx) reported that the debt in SOR 1.c had a zero balance because the account had been transferred. Again, there was a separate listing under account 4149 in collection with agency X. As shown in Exhibit E, the account originally numbered xxx0295xxxx had been in

	\$2,271 high credit, \$1,662 for collection May 2009; \$1,542 balance Oct. 2009. (Ex. 4, 6.)	temp. hardship Apr. 2010, balance \$1,222.40 Apr. to Jun. 2010 (Ex. E, G.); arranged to pay \$75 monthly Jul. 2010 (Ex. G.); paid \$75 by debit Jul. 3, 2010. (Ex. H.)
\$1,542 credit card debt in collection (SOR 1.d)	Same debt as SOR 1.c	See above.
\$2,200 credit card debt charged off (SOR 1.e)	Account opened Apr. 2007, last activity Oct. 2007, \$1,750 limit, \$2,200 charged off. (Ex. 4, 6, 7.)	No payments as of Jul. 2010.
\$2,791 credit card debt in collection (SOR 1.f)	Same debt as SOR 1.b (Ex. 4, B.)	See above.

In February 2008, Applicant began working for her current employer.<sup>4</sup> (Tr. 72.) Around May 25, 2009, Applicant was asked by her employer to apply for a security clearance. (Tr. 34.) She accessed the e-QIP form three or four times over a week before completing it on June 1, 2009. (Tr. 35.) She omitted any mention of her part-time work with a previous defense contractor for whom she had completed the SF 86 in 2005. She responded “No” to the police record inquiries, including 22.c, “Have you EVER been charged with a felony offense?” And she also answered “No” to the financial record inquiries which had a seven-year scope, including 26.g, “Have you had bills or debts turned over to a collection agency?,” 26.h, “Have you had an account or credit card suspended, charged off, or cancelled for failing to pay as agreed?,” and 26.m, “Have you been over 180 days delinquent on any debt(s)?.” Applicant also responded negatively to question 26.n, “Are you currently over 90 days delinquent on any debt(s)?” (Ex. 1.)

Applicant’s credit report of June 19, 2009, revealed the outstanding collection debts identified in SOR 1.a, 1.d (also alleged under original creditor in SOR 1.c), 1.e, and 1.f (also alleged under original creditor in SOR 1.b). (Ex. 6.) On July 16, 2009, Applicant was asked about those debts and her failure to disclose them on her e-QIP. She admitted knowing that that the debts in SOR 1.a, 1.d, and 1.e went into collections in the past two or three years. When able, she had made some payments on the debts in SOR 1.a and 1.d. She had inquired about debt consolidation two or three years ago but would have had to pay the firm \$300 a month for six months before any of her creditors would be repaid. Applicant added

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collection with agency X. It had a current balance of \$1,222.40. Applicant’s June 2010 credit report listed only one outstanding balance on a debt originally held by the bank, of \$1,222 under account 4149, which is likely the account number assigned by the collection agency. As of June 28, 2010, another collection agency was handling the \$1,222.40 debt balance under a client reference number 41492332. (Ex. G.)

<sup>4</sup> Applicant responded affirmatively at her hearing when asked by Department Counsel whether she had the opportunity to work full-time before early July 2010 when her hours were apparently reduced to 16 to 24 hours per week. (Tr. 72.) Applicant provided financial records which show payroll deposits of \$587.54 on September 11, 2008, \$743.31 on September 25, 2008, \$652.75 on October 9, 2008, \$808.49 on October 24, 2008, \$554.93 on November 6, 2008, \$714.33 on November 20, 2008, \$621.89 on December 4, 2008, \$817.95 on December 18, 2008, and \$642.07 on December 31, 2008. So she was working full-time plus overtime when available as of September 2008.

that she had lost her paperwork while moving about three months ago. Applicant admitted she had not made any efforts to repay the debt in SOR 1.e and was uncertain whether it was still an open collection account. Applicant expressed her intent to resolve the open collection accounts. Applicant acknowledged that she had a credit card account with the lender in SOR 1.b at one time, although she did not recall that it went past due. She did not recognize the lender identified in SOR 1.f. Applicant attributed her debts to her job layoff in June 2001, and low-paying jobs thereafter, which did not give her the income to pay even the monthly minimums on her credit card accounts. Her current bills were being paid according to her budget. She attributed the omission of the debts from her e-QIP to not having had the paperwork about the accounts when she filled out the form. (Ex. 4.)

With her pay \$11.50 hourly and overtime at \$17.25 hourly, Applicant's net pay was around \$928.73 per week as of late September 2009. (Ex. 4.) Other obligations took priority over repaying her old debts. She and her family members incurred a \$1,000 heating bill, and car expenses, including tires. (Tr. 73.) At DOHA's request, Applicant completed a personal financial statement in mid-October 2009. She listed monthly expenses and one debt payment of \$40, which together exceeded her net income of \$2,016 by about \$674, but added that she was responsible for only a quarter of the household bills. Other family members (mother, sister, and son) contributed to the household. (Ex. 4.) In January 2010, a wireless telephone provider placed a \$482 debt in collection because of no activity since November 2009. (Ex. 7.) Applicant testified that this cellular phone was opened for her niece. (Tr. 70.) Applicant made no payments on the debt and the balance reached \$838 as of June 2010. (Ex. 7; Tr. 70.) As of June 2010, the student loan on which Applicant co-signed for her niece was in deferment with a balance owed of \$15,681.96. (Ex. D.)

As of July 2010, Applicant was paying at least half of the \$1,200 rental fee for the apartment Applicant shared with her mother and her son. Applicant's son receives \$560 in social security benefit each month and he and his grandmother each pay a quarter of the rent. (Tr. 63.) Because of a cut in overtime and in her own hours to between 16 and 24 hours per week as of early July 2010, Applicant's net monthly income was \$1,600, although she hoped to return to full-time hours. (Tr. 64-65.) She paid off a car loan in January 2010. (Tr. 66.) With her share of the expenses around \$1,055 and credit card debt payments totaling \$165 per month (Tr. 67.), she had around \$380 per month that she was saving for emergencies.<sup>5</sup> (Tr. 68.) Applicant last used a credit card for purchases in May 2009. (Tr. 69, 85.) She has not received any credit counseling. (Tr. 70.)

Applicant testified at her hearing on July 21, 2010, that she did not know that her past due credit card accounts had gone to collections at the time that she completed her e-QIP. (Tr. 38.) She acknowledged knowing that she had fallen behind on some of her credit cards, but she was not sure of the creditors' names or their addresses, and could not find her financial records because she moved the day she completed the June 2009 e-QIP, so she responded negatively to the financial record questions. (Tr. 33, 38.) She claims to not recall when she opened her credit card accounts or when she stopped using them. (Tr. 43-44.) Applicant did not list her 1997 felony charge because it was dismissed and she did not know

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<sup>5</sup> Apparently Applicant has other expenses that are not included in the \$1,055, including her share of the \$150 monthly rental fee for a storage unit.

that she had been charged with a felony. (Tr. 47-48.) In response to why she did not list her bankruptcy on her earlier security clearance application, the SF 86 completed in January 2005, Applicant testified, "I didn't think it was relevant at the time." (Tr. 50.) She had not disclosed any credit card debts on the SF 86 because she believed she had no debts at that time. (Tr. 51-52.)

## **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.

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 about finances 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 overextended herself on credit cards and filed for bankruptcy in May 1999. After her debts were discharged, she showed she could not handle credit responsibly in that she opened new credit card accounts to re-establish her credit but then did not remain current in her payments on four accounts. As of June 2009, when she applied for a security clearance for her present duties, she owed around \$11,076 in delinquent debt. And although not alleged in the SOR, she cosigned on a cellular phone account for her niece that was placed for collection in January 2010 in the amount of \$482. As of June 2010, the balance had increased to \$838 due to nonpayment. AG ¶ 19(a) and ¶ 19(c) are established.

Mitigating condition AG ¶ 20(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," cannot reasonably apply. Although her bankruptcy was filed in 1999, she stopped paying on newer credit card accounts in 2007.

Applicant attributes her financial problems to a job layoff in June 2001 and to low-paying jobs thereafter. Applicant indicated to a Government investigator in July 2009 that after she was laid off, she did not earn enough to make the minimum payments on her credit cards. The uncontroverted evidence indicates that after she resigned from her full-time employment in January 2006, she was employed only part-time on weekends, although as of February 2006 she expected her hours at work to increase. She was employed as a cashier for a wholesale club from April 2006 to February 2007 and then as a security guard/officer when she fell behind on her credit card accounts. Low income only partially mitigates the security concerns, however. She showed financial irresponsibility in her handling of the credit card accounts in the SOR and the wireless telephone debt that was not alleged. Applicant knew that the debts in SOR 1.a and 1.d (duplicated in SOR 1.c) had been referred for collections. In July 2009, she told a Government agent that the accounts had been placed for collection two or three years ago and that she had made payments

when she could afford to. She also knew that her credit card account in SOR 1.e had fallen delinquent two or three years before. In her favor, Applicant contacted a debt consolidation company. But she elected not to pursue that option because she would have to pay the firm \$300 a month for six months before any of her funds would be disbursed to her creditors. While Applicant certainly was not required to pursue debt consolidation to resolve her debts, AG ¶ 20(b) cannot fully apply where she failed to remain apprised of her debt situation and her debt payments were prompted by collection efforts. Although her hourly wage was only \$11.50 to start with her present employer, she supplemented her wages by overtime work, and she shared living costs with other family members, including her son who has a social security benefit. Applicant was not sufficiently proactive in addressing her debts. Moreover, she showed poor financial judgment in allowing the wireless phone debt to go to collection in January 2010. Her hours at work were not reduced until late June 2010.

Applicant's payments toward three of her four delinquent debts are viewed favorably despite their recency. However, it is difficult to apply AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Payments toward her debts were largely prompted by collection efforts. Although her credit reports show significant progress toward resolving the debt in SOR 1.d (duplicated in SOR 1.c), the balance of SOR 1.a has been reduced by only \$85.99, despite her claim of \$75 monthly payments since December 2009. Furthermore, she has yet to make any payments on the debt in SOR 1.e, and the wireless phone debt (not alleged) has increased to \$838 due to nonpayment. Full satisfaction of her delinquent debt is not required for access, but a longer track record of debt repayment is required before I can confidently conclude that her financial problems are safely behind her. She still owes around \$8,054 in delinquent credit card debt, at least \$838 in wireless telephone debt, and has not had any credit counseling. Should her niece default on her student loan, Applicant will become responsible for repaying that debt as well. AG ¶ 20(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," is not yet established.

## **Guideline E, Personal Conduct**

The security concern about 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.

Applicant did not disclose her September 1997 felony arrest, her bankruptcy, or any delinquent debts on her January 2005 SF 86 or her June 2009 e-QIP. Applicant denies any intentional falsification. Accordingly the Government has the burden of establishing the applicability of 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.

A finding of intentional falsification can be inferred from omission of information that on its face should have been reported. Question 21 on the SF 86 and 22.c on the e-QIP are unambiguous in requiring the disclosure of any felony arrests regardless of the passage of time. Applicant denies knowing that she was charged with a felony offense, which the Government submits is not credible in light of her probation, required parenting classes, and loss of temporary custody of her son. There is nothing about Applicant's sentence that is imposed only in felony cases. Available court records show the case was handled in district court with no formal indictment, and the charges were dismissed in December 1999. The evidence falls short of proving that she knew she had been charged with a felony offense. As to whether the charges should have been reported in response to question 26 on the SF 86 pertaining to any other offenses, she was charged outside the seven-year scope of the inquiry. I find no merit to the Government's assertion that Applicant should have known to list the offense because she was still on probation during the first year covered by question 26. And clearly, the charges were not within the seven-year inquiry of question 22.b on her June 2009 e-QIP concerning any arrests.

However, Applicant admitted at her hearing that she had not listed her 1999 bankruptcy on her January 2005 SF 86 because she did not think it was relevant at the time. (Tr. 50.) Her response to 33, "In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)?" was knowingly false and implicates AG ¶ 16(a). But the evidence does not show that Applicant should have listed any of the debts in the SOR in response to questions 38 (debts over 180 days delinquent) or 39 (debts currently over 90 days). The debts alleged in the SOR were not shown to be delinquent as of her February 2005 SF 86. The credit bureaus were reporting that Applicant owed a balance of \$25,101 for the repossessed vehicle, but no other delinquencies. (Ex. 6.) When Applicant was interviewed in February 2006, she indicated that the repossession occurred long before her bankruptcy and that debt may have been included on her bankruptcy. She also indicated that she had not heard from the creditor in more than a decade. The Government did not allege that Applicant knowingly withheld information about that debt from her SF 86.

As of her June 2009 e-QIP, Applicant had stopped paying on the credit card accounts in SOR 1.a, 1.b (duplicated in 1.f), 1.d (duplicated in 1.c), and 1.e. As shown by her admissions to the Government investigator in July 2009, she knew that the debts in SOR 1.a and 1.d were in collections (Ex. 4.), notwithstanding her recent testimony to the contrary. (Tr. 37.) And she also admitted that she had stopped paying on the credit card account in SOR 1.e, and had been contacted by the creditor around June 2008. Even assuming she had misplaced her paperwork during a move, it would not excuse her knowingly false responses to questions 26.g (bills for collection), 26.h (credit cards suspended, charged off, or cancelled), 26.m (180 days delinquent), and 26.n (currently over

90 days delinquent) on her e-QIP. AG ¶ 16(a) is also implicated because of the conduct alleged in SOR 2.a through 2.c.

None of the mitigating conditions are satisfied. No one reviewing either her January 2005 SF 86 or her June 2009 e-QIP would know that she had financial problems. There is no indication that Applicant informed the Government of her bankruptcy before her interview of February 2006. AG ¶ 17(a), “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts,” does not mitigate her SF 86 falsification of question 33. Her admissions to the credit card delinquencies during a July 2009 interview constitute a prompt correction of her June 2009 e-QIP falsifications, but it was not shown that she volunteered the information about her debts upfront before being confronted about her poor credit record. 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,” cannot reasonably apply to the falsification of two security clearance applications.

Applicant’s efforts to justify her negative responses to the debt inquiries (the 1999 bankruptcy was no longer relevant in January 2005 and she did not have the paperwork on her delinquent credit card accounts in June 2009) preclude 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.

### **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.

Applicant incurred delinquent debt after she was afforded a financial fresh start through a Chapter 7 discharge in September 1999. The timely payments that she made on her credit obligations around 2005 weigh in her favor, but they were not sustained. Her mismanagement of credit continues to cast doubt about her financial judgment, especially in light of the wireless debt going to collection in January 2010 and her inability or unwillingness at her hearing to provide details about her delinquent credit card accounts.

Applicant cannot fully demonstrate financial reform when she does not know or is unwilling to acknowledge what she owes or to whom. Her lack of candor about her financial problems when applying for security clearance shows an unacceptable tendency to act in self-interest and it calls into question her judgment, reliability, and trustworthiness. Based on the evidence before me, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the amended 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 (duplicate of 1.d)
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant (duplicate of 1.b)
Subparagraph 1.g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	For 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