DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---------------------------	)	ISCR Case No. 09-06544
SSN: -----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: Eric A. Eisen, Esquire

September 17, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant's debts were discharged under Chapter 7 of the Bankruptcy Code in March 2001. Her statement of reasons (SOR) listed 17 debts totaling $40,260. She resolved all of her SOR debts, except one debt, which is in a payment plan. She failed to disclose any delinquent debts and her May 25, 2008 arrest on her security clearance application. Financial considerations are mitigated; however, personal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On May 15, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On July 28, 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 August 13, 2010, Applicant responded to the SOR and requested a hearing. (HE 3) On August 24, 2010, Department Counsel indicated he was ready to proceed on Applicant's case. On August 27, 2010, DOHA assigned Applicant's case to me. On August 27, 2010, DOHA issued a hearing notice. (HE 1) On September 3, 2010, Applicant's hearing was held.[1] At the hearing, Department Counsel offered six exhibits (GE 1-6) (Tr. 15-16), and Applicant offered 91 pages (pg.) of documents. (Tr. 17-18; pg. 1-91) There were no objections, and I admitted GE 1-6 and pg. 1-91. (Tr. 16, 19) Additionally, I admitted the hearing notice, SOR, and Applicant's response to the SOR as hearing exhibits. (HE 1-3) After the hearing, Applicant provided 33 pages of additional documentation. (pg. 1A-33A) There were no objections to Applicant's post-hearing exhibits. On September 8, 2010, I received the transcript.

Findings of Fact[2]

Applicant's SOR response admits responsibility for one debt owed to the creditors in SOR ¶ 1.k. (HE 3) She admitted that a Chapter 7 bankruptcy discharged her unsecured debts in March 2001. (HE 3) She denied the remaining SOR allegations. Her admissions are accepted as factual findings.

Applicant is 47 years old. (pg. 20) When Applicant was nine years old, her mother was murdered. (Tr. 21) Applicant lived with her grandmother until her grandmother died. (Tr. 21) When Applicant was 14 years old, she moved in with her aunt and uncle. (Tr. 22) There were ten children in her aunt and uncle's home. (Tr. 22) When she was 18, she moved out of their home. (Tr. 22)

Applicant married in October 1999, and her divorce was final on September 11, 2009. (Tr. 23, 27, 68; GE 1) Her husband was physically abusive. (Tr. 25) On one occasion, he hit her head and cracked a bone in her skull, which required surgery. (Tr. 26) He was often unemployed. (Tr. 28) She has one step son. (Tr. 26)

In 1999, Applicant lost her job, and in 2000, she filed for bankruptcy. (Tr. 23) Her debts were discharged under Chapter 7 of the Bankruptcy Code in March 2001. (SOR ¶ 1.r; HE 2, 3) She started working for a corporation in November 2000, and she retained that employment until May 2008. (Tr. 24, 63; GE 1) Applicant's husband also lost his employment. (Tr. 65) She had two, 30-day contract assignments. (Tr. 63) She earned a

[1]Applicant waived her right to 15 days notice of the date of the hearing. (pg. 10-11)

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

masters degree in June 2005. (GE 1) She has been employed by a government contractor from May 2009 until August 2, 2010. (Tr. 64, 67) After August 2, 2010 she began collecting unemployment compensation. (Tr. 67)

Financial Considerations

Applicant's SOR listed 17 debts totaling $40,260. The status of her 17 SOR debts is as follows:[3]

1.a (medical collection debt—$7,832)—PAID. Applicant paid $3,179 on August 6, 2010, resolving this debt. (Tr. 53-55; pg. 2, 5, 9, 10, 2A, 26A) A September 7, 2010 letter from the creditor states the debt has been settled in full. (pg. 27A)

1.b (medical collection debt—$423)—PAID. Applicant paid $423 on September 9, 2010, resolving this debt. (pg. 2, 11) The creditor wrote the debt was paid. (pg. 11)

1.c (medical collection debt—$75)—DISPUTED. Applicant was unable to locate the source of this debt, and it was not on her most recent credit report. (pg. 2, 14)

1.d (collection account—$5,065)—PAID. The creditor wrote on August 6, 2010, that Applicant could settle the debt by paying $2,500 by August 20, 2010. (pg. 16) Applicant paid $2,500 on August 10, 2010, resolving this debt. (pg. 2, 4, 15, 16)

1.e (collection account—$2,724)—PAID. Applicant paid $1,800 on August 6, 2010, resolving this debt. (pg. 2, 4, 17, 18) An August 10, 2010 letter from the creditor indicates the debt was settled in full on August 9, 2010. (pg. 18)

1.f (collection account—$701)—PAID. Applicant paid $356 on August 6, 2010, resolving this debt. (pg. 2, 4, 19, 20, 21, 2A, 29A) On September 3, 2010, the creditor wrote the debt was settled. (pg. 29A)

1.g (collection debt—$1,273)—PAID. Applicant paid $1,056 on August 6, 2010, resolving this debt. (pg. 2, 4, 22-25, 2A, 31A) The debts in SOR ¶¶ 1.g, 1.l, and 1.o are duplications of each other. Letters from the creditors and collection agents document the account transfers. (pg. 22-25, 37, 41) A September 1, 2010 letter from the creditor indicates the debt is resolved. (pg. 31A)

1.h and 1.i (collection debts—$442 & $425)—DISPUTED. Applicant said the two accounts were not her accounts (pg. 26, 28) She wrote the credit reporting company contesting the entries for the two delinquent accounts, and on August 10, 2010, the credit reporting company responded that the debts were under investigation. (pg. 27, 29) On August 31, 2010, the credit reporting company deleted the derogatory entries from Applicant's credit report.

[3] Applicant summarized the status of her SOR debts at pg. 2.

1.j (collection debt—$1,438)—PAID. Applicant wrote that she paid $896 on May 11, 2010, resolving this debt. (pg. 2, 30-34, 2A) Applicant did not provide proof of the debit from her checking account or a statement from the creditor indicating the debt was paid.

1.k (collection debt—$6,724)—PAYMENT PLAN. Applicant paid $100 on August 27, 2010, initiating her payment plan. (pg. 2, 6, 35-36, 42) The settlement agreement requires her to increase her monthly payments to $250 in February 2011. (pg. 36) The settlement agreement lists three creditors who were involved in this account. (pg. 36) The debts in SOR ¶¶ 1.k and 1.p are duplicates of each other.

1.l (collection account—$2,298)—PAID. Duplication of the debt in SOR ¶ 1.g. *See* status of SOR ¶ 1.g, *supra*.

1.m (collection account—$1,654)—DISPUTED. This debt was not on Applicant's most recent credit report.

1.n (collection account—$297)—PAID. An August 31, 2010 letter from the creditor indicates full payment of $297 was received, resolving this debt. (pg. 2, 6, 40, 2A, 33A)

1.o (collection debt—$2,198)—PAID. Duplication of the debt in SOR ¶ 1.g. *See* status of SOR ¶ 1.g, *supra*.

1.p (collection debt—$6,309)—PAYMENT PLAN. The debts in SOR ¶¶ 1.k and 1.p are duplicates of each other. *See* status of SOR ¶ 1.k, *supra*.

1.q (collection debt—$331)—DISPUTED. This debt was not listed on Applicant's most recent credit report.

In 2009, Applicant hired two credit management companies to resolve her credit issues. (Tr. 29-30; pg. 57-70, 77-78) She believed a credit management company was supposed to pay each creditor an amount each month. (Tr. 70) Applicant listed her 10 creditors and debts totaling $24,227 for the credit management company. (pg. 59) Of the ten debts, three are medical debts, and the three medical debts total $10,513. (pg. 59) She provided checking account statements showing payments of $385.99 on January 26, 2009; February 25, 2009; March 25, 2009; May 29, 2009; and December 26, 2009. (pg. 71, 72, 74, 75, 76) She provided a checking account statement showing a payment of $315 on April 16, 2009; however, the account number did not match the account number of the payments mentioned in the previous sentence. (pg. 73) She was unhappy with the results of the credit management companies; so she "fired" them. (Tr. 29) She emphasized that she believed the credit management companies would make payments to all of her creditors. (Tr. 30-32, 70)

Applicant provided her November 30, 2009 personal financial statement (PFS) as part of her response to DOHA interrogatories. (GE 5)[4] She stated her monthly net salary was $2,891. Her monthly expenses were $2,541, and her monthly debt payments total $2,290. She listed a positive net remainder of $250; however, the net remainder should be a negative $1,940.

Applicant paid $180 to resolve a 2009 medical collection debt that was not listed on her SOR. (pg. 45-48, 53-54) She paid $180 to resolve a 2009 medical collection debt that was not listed on her SOR. (pg. 45-48) She paid $190 to resolve a 2009 medical collection debt that was not listed on her SOR. (pg. 49-51)

On May 6, 2010, Applicant paid a non-SOR collection company $652.60, as indicated on her monthly account statement. (pg. 79) This was the only debt paid by her credit management company. (Tr. 50) Applicant made three payments using automatic transfer of funds from her account for $407.05 on April 26, 2010; May 24, 2010; and on June 24, 2010. (pg. 80-83)

On August 4, 2010, Applicant borrowed $10,000 from her 401K account to pay her delinquent debts. (Tr. 68; pg. 8) She has about $8,000 left in her 401K account. (Tr. 79-80) In August 2010, she hired a law firm specializing in improving credit ratings and resolving delinquent debt. (Tr. 36; pg. 8)

On August 31, 2010, a credit reporting company updated information on 12 of her accounts, and deleted derogatory information relating to five accounts. (pg. 4A-5A) This credit report lists a zero balance owed for all of Applicant's accounts, except she has eight accounts with the following balances: $20,028 (pg. 8A, 13A); $2,217 (pg. 9A, 14A); $36,064 (pg. 10A, 15A); $111,344 (pg. 11A); $411 (pg. 18A, 22A); $285 (pg. 19A, 23A); $1,300 (pg. 19A, 23A); and $16,805 (pg. 19A, 23A) with a "PAID OR PAYING AS AGREED" for its status (pg. 6A-24A) In the last two years, she has not been late on any credit card, car payments, mortgage payments, or rent payments. (Tr. 40)

Falsification of security clearance application

On May 15, 2009, Applicant completed her SF-86. Section 22a asks, "Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you; are you on trial or awaiting a trial on criminal charges; or are you currently awaiting sentencing for a criminal offense?" Section 22b asks, "Have you been arrested by any police officer, sheriff, marshal, or any other type of law enforcement officer?" Section 22c asks, "Have you EVER been charged with any felony offense?" Section 26 asks in the last seven years, "have you been over 180 days delinquent on any debts?" and "Are you currently over 90 days delinquent on any debts?"

[4] No negative inference concerning her eligibility for access to classified information is drawn from her PFS.

In 2007, Applicant co-signed a lease of an apartment to help a male friend (M), who was down on his luck.[5] After several months, M failed to pay the rent and when she confronted M about the rent, he assaulted her. (OPM PSI at 1; GE 5) She went to court, and obtained an eviction order. *Id*. M's female friend, C, obtained a no-contact court order against Applicant, and Applicant obtained a no-contact court order against C. *Id*. Sometime before May 25, 2008, C made a complaint to the police that Applicant was using a telephone to harass C. (Tr. 47)

On May 25, 2008, Applicant called 911 to complain about her husband, and when the police officers arrived, they advised Applicant that there was a "wanted" or warrant for her arrest from another jurisdiction in the same state. (Tr. 45, 69; GE 5) The police put handcuffs on Applicant and took her into custody. (Tr. 44-45) The police released Applicant to her sister. (Tr. 45) Her sister took Applicant to the police station where the warrant was issued. (Tr. 46) The police fingerprinted Applicant and questioned her about C's allegation of telephone harassment. (Tr. 46) Applicant denied C's allegations. (Tr. 47) Applicant hired a lawyer to help with her criminal case. (OPM PSI at 2; GE 5) After Applicant appeared in court, the judge "dismissed [the harassment charge] on the condition that the restraining order not be violated for the remainder of the original year." *Id*. Ultimately, the charge was dismissed. (Tr. 47, 69)

Applicant answered, "No" to the questions in Section 22. Her answer is incorrect since a warrant was issued for her arrest, and she was actually arrested. On June 18, 2009, an OPM investigator interviewed Applicant about her failure to disclose her arrest on May 25, 2008. Applicant explained:

> When filling out the SF-86 she was confused regarding the meaning of arrested and convicted. She mistakenly thought the question was referring to a conviction. She now understands that arrested means being taken into custody. This was a misunderstanding on her part and not an attempt to conceal the arrest. (OPM PSI at 2)[6]

At Applicant's hearing on September 3, 2010, she provided a different explanation for why she failed to disclose her May 2008 arrest:

> I didn't read the full question thoroughly. And I had assumed they were indicating, do you have a felony? That's what I thought the question was asking me, was I convicted of any type of felony? Because if I had actually read it thoroughly, I would have said yes, I had been arrested, but I just - - it was just the way I perceived the question that was being asked [of] me. (Tr. 44)

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[5] *See also* Office of Personnel Management personal subject interview (OPM PSI) on June 18, 2009 at 1-2 (GE 5).

[6] On November 30, 2009, Applicant responded to DOHA interrogatories and indicated that the OPM PSI accurately reflected the information that she provided to the OPM investigator. (GE 5)

Applicant answered, "No" to the questions in Section 26 about delinquent debt. (Tr. 48) She began to have financial problems when Applicant and her husband both became unemployed, and she decided a credit management company would be the best way to maintain currency on their mortgage and handle their creditors. (Tr. 65) She did not know her debts were delinquent. (Tr. 71) She lived with her husband and he sometimes got the mail. (Tr. 78) She believed that her accounts were being kept current or close to current by the credit management companies. (Tr. 48, 69-70) They said to send all correspondence from creditors to the credit management company. (Tr. 72) She paid the credit management companies approximately $4,000 and she thought they were making payments to all of her creditors. (Tr. 49, 69-70) She learned only one creditor was paid, and she was upset about being misled. (Tr. 49) She learned that her debts were not being paid after she completed her SF-86. She answered the questions to the best of her ability based on the financial information she had at the time she completed her SF-86. (Tr. 70-71) Applicant disclosed her bankruptcy in 2000 on her SF-86. (GE 1)

Character references

On September 18, 2009, Applicant received a congratulatory email from a lieutenant colonel thanking her for her dedication and outstanding work ethic. (Tr. 42; pg. 87) He looks forward to working with her in the future. (pg. 87) Her supervisor echoed the lieutenant colonel's laudatory comments. (pg. 88, 90) The lieutenant colonel also provided a letter lauding Applicant as "an invaluable asset to any organization that hires her" and praising her tireless efforts. (GE 5 at 89)

On August 25, 2010, Applicant's supervisor for more than one year wrote that she makes valuable contributions to the mission and is conscientious about security. (Tr. 41; pg. 85) She recommended entrusting Applicant with a security clearance. (pg. 85)

On August 26, 2010, Applicant's colleague at her employment for six years described her valuable contributions to corporate goals. (pg. 86) She lauded Applicant's diligence, attention to detail, trustworthiness, loyalty, and initiative. (pg. 86) She recommended reinstatement of Applicant's clearance. (pg. 86)

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 PSI, and her statement at her hearing.

In March 2001, Applicant's debts were discharged under Chapter 7 of the Bankruptcy Code. Her SOR lists 17 delinquent debts totaling $40,260. 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 full application of AG ¶¶ 20(b), 20(c), and 20(d), as well as application of 20(e) to the debts she successfully disputed. Applicant received financial counseling in 2000 as part of her bankruptcy. She also generated a PFS as part of her response to DOHA interrogatories. Applicant's financial situation was damaged by insufficient income during periods of unemployment, divorce, and her spouse's financial irresponsibility. However, her financial circumstances have been stable from May 2009 until August 2, 2010 because she was employed by a government contractor. Applicant established that she acted responsibly under the circumstances. She attempted to use two credit management companies to maintain contact with her creditors.[7] She attempted to pay or settle, or attempted to establish payment plans with her creditors. She paid seven debts, established a payment plan (by making her first payment) on one debt, adequately documented disputes of five debts, and showed that the other SOR debts were duplications. Her August 31, 2010, credit report does not list any delinquent debts or accounts. Her financial problem is being resolved or is under control. She admitted responsibility for and resolved her SOR debts, showing good faith mitigation under AG ¶ 20(d).[8]

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[7]"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.

[8]The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

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

AG ¶ 20(e) is applicable to the five SOR debts Applicant disputed: 1.c ($75); 1.h ($442); 1.i ($425); 1.m ($1,654); and 1.q ($331). She disputed her responsibility for these five debts, and they were all removed from her credit report, which is the Government's only basis for alleging the debts were delinquent.

In sum, Applicant fell behind on her debts because of marital problems and unemployment. She paid several thousand dollars to credit management companies that did not resolve her debts. She borrowed $10,000 from her 401K account and used those funds to pay all of her legitimate debts, except for the debt in SOR ¶ 1.k ($6,724), which is in an established payment plan. Her efforts are sufficient 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 May 15, 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;
>
> (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.[9]

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[9]The 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 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.

Applicant admitted that she failed to disclose debts that were currently delinquent more than 90 days, and debts that were delinquent more than 180 days in the last seven years on her May 15, 2009 SF-86. She also admitted that she failed to disclose her May 25, 2008 arrest for making harassing telephone calls on her May 15, 2009 SF-86. Applicant contended that her inaccurate answers were not deliberate and intentional attempts to deceive the Government.

When Applicant completed her SF-86, she disclosed her bankruptcy. She was not aware of any debts that were 180 days delinquent in the last seven years. She was not aware of any debts that were currently delinquent. She thought her credit management company was maintaining her debts in a current or almost current status. She would not have paid thousands of dollars to the credit management company if she had known that they were retaining almost all of her payments for fees and charges and not paying her debts. When she disclosed her bankruptcy, she alerted the Government to the possibility that she had financial problems. I find the allegation in SOR ¶ 2.b is unsubstantiated because Applicant did not deliberately intend to provide false information to the government about her past due debts.

The allegation in SOR ¶ 2.a is problematic. Applicant knew what an arrest was. She has a masters degree. She was 46 years old. She had already been to court on her criminal charge of making harassing phone calls. She has sufficient knowledge and experience to know the difference between an arrest and a conviction, and between an arrest and a felony. On June 18, 2009, Applicant told the OPM investigator that "she was confused regarding the meaning of arrested and convicted. She mistakenly thought the question was referring to a conviction." (OPM PSI) This explanation is not credible.[10] Her explanation at her hearing was:

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).

[10]The SOR did not allege that Applicant made a false statement to the OPM investigator in her PSI. 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)). See also ISCR Case No. 08-09232 at 3 (App. Bd. Sept. 9, 2010) (stating that inconsistent statements in exhibits may be considered in assessing an applicant's credibility and evaluating mitigation and rehabilitation evidence even though they are not cited in the SOR as raising a security concern). I have considered Applicant's non-SOR OPM PSI explanation for not disclosing her arrest for purposes of (a), (b), (c), and (e) and not for any other purpose.

> I didn't read the full question thoroughly. And I had assumed they were indicating, do you have a felony? That's what I thought the question was asking me, was I convicted of any type of felony? Because if I had actually read it thoroughly, I would have said yes, I had been arrested, but I just - - it was just the way I perceived the question that was being asked [of] me. (Tr. 44)

The only felony question (22c) is after the arrest question (22b). Moreover, her responses to many of the other questions on her SF-86 are thorough, providing a strong indication that she spent a considerable amount of time completing her SF-86 and did in fact read the question about arrests before she answered, "No." In addition, her arrest had to be a fairly traumatic, shocking episode. The police took her into custody, handcuffed her and fingerprinted her on May 25, 2008. She had to call her sister for assistance on the day of her arrest. She hired a lawyer to help with her criminal case. After she appeared in court, the judge "dismissed [the harassment charge] on the condition that the restraining order not be violated for the remainder of the original year." The arrest and disposition are sufficiently recent and exceptional in her life for me to conclude that she read Section 22 Police Record, recognized the requirement to disclose her arrest, and chose not to disclose the arrest information.

AG ¶¶ 16(a) and 16(b) are established with respect to the allegation in SOR ¶ 2.a, and further inquiry about the applicability of mitigating conditions is required.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

> (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
>
> (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 the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
>
> (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
>
> (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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions fully apply. Applicant's falsification of her May 15, 2009 security clearance application by intentionally failing to disclose her May 25, 2008 arrest is recent, serious and not mitigated. A key component of the protection of classified information is reliance on security clearance holders to accurately report potential compromise of classified information. A person who has a recent arrest, and who denies having an arrest in the last seven years on their security clearance application cannot be relied upon to report potential compromise of classified information. Applicant's conduct as alleged in SOR ¶ 2.a is not mitigated at this time.

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 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 47 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. 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 and her former husband's unemployment, their divorce, and problems with her spouse's handling of their finances contributed to her financial woes. Several character witnesses laud her diligence, professionalism, and responsibility. I give Applicant substantial credit for admitting responsibility for 12 of her 17 SOR debts totaling $40,260, and then withdrawing money from her 401K account to resolve her delinquent SOR debts. She paid seven debts, established a payment plan for one debt, successfully disputed five debts, and the others are duplications. She is also credited with disclosing her bankruptcy on her security clearance application. 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 has a masters degree, and she was 46 years old when she signed her SF-86. She falsely stated she did not have any arrests in the last seven years, and she did not disclose her May 25, 2008 arrest for making harassing phone calls. On June 18, 2009, Applicant told the OPM investigator that "she was confused regarding the meaning of arrested and convicted. She mistakenly thought the question was referring to a conviction." (OPM PSI) Her arrest was a traumatic, shocking episode, involving being handcuffed and fingerprinted. She hired a lawyer to help with her criminal case. After she appeared in court, the judge dismissed the harassment charge "on the condition that the restraining order not be violated for the remainder of the original year." These events were sufficiently recent, traumatic, and complicated to have emphasized a careful review of the section of her security clearance labeled "**Section 22: Police Record**." (emphasis in original) I conclude that she recognized the requirement to disclose her arrest, and deliberately chose not to disclose the arrest information. Her falsification of her May 15, 2009 security clearance application by intentionally failing to disclose her May 25, 2008 arrest is recent, serious, and not mitigated at this time. Additional time must elapse without conduct raising security concerns, before access to classified information is warranted.

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 fully mitigated; however, personal conduct concerns are not 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:	FOR APPLICANT
Subparagraphs 1.a to 1.r:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	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