



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



In the matter of:)
)
-----) ISCR Case No. 11-07806
)
Applicant for Security Clearance)

Appearances

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

03/08/2013

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On March 16, 2011, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On an unspecified date, the Department of Defense (DOD) issued her a set of interrogatories. She responded to the interrogatories on June 16, 2012.² On an unspecified date, the DOD issued her another set of interrogatories. She responded to the interrogatories on June 16, 2012.³ On September 5, 2012, the DOD issued a Statement of Reasons (SOR) to her, under Executive Order 10865,

¹ GE 1 ((SF 86), dated March 16, 2011).

² GE 2 (Applicant's Answers to Interrogatories, dated June 16, 2012).

³ GE 3 (Applicant's Answers to Interrogatories, dated June 16, 2012).

Safeguarding Classified Information within Industry (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct), and it detailed reasons why the DOD adjudicators were unable to find 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 a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on September 17, 2012. In two separate sworn statements, dated October 1, 2012 and October 29, 2012, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On December 27, 2012, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on January 4, 2013. A Notice of Hearing was issued on January 25, 2013, and I convened the hearing, as scheduled, on February 13, 2013.

During the hearing, five Government exhibits (GE 1 through GE 5) and five Applicant exhibits (AE A through AE E) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on February 22, 2013. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and she submitted four additional exhibits (AE F through AE I) that were admitted into evidence without objection.

Findings of Fact

In her Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations and personal conduct (¶¶ 1.a. through 1.f., and 2.a.). Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 53-year-old employee of a defense contractor who, since October 2010, has served as a senior analyst, program management support. She is a retired lieutenant colonel in the U.S. Air Force, having served honorably on active duty from February 1983 until February 2009.⁴ She was retired, but unemployed, from February 2009 until October 2010.⁵ During her military career, Applicant was awarded the Defense Meritorious Service Medal, the Meritorious Service Medal (with three oak leaf clusters), the Air Force Commendation Medal, the Air Force Achievement Medal (with one oak leaf cluster), the Air Force Outstanding Unit Award (with one oak leaf cluster),

⁴ GE 1, *supra* note 1, at 12, 14; Certificate of Release or Discharge from Active Duty (DD Form 214), dated January 31, 2009, attached to GE 2 (Applicant's Answers to Interrogatories).

⁵ GE 1, *supra* note 1, at 11.

the Air Force Organizational Excellence Award (with five oak leaf clusters), the Combat Readiness Medal, the National Defense Service Medal (with one service star), the Global War on Terrorism Service Medal, the Air Force Longevity Service Medal (with five oak leaf clusters), and the Air Force Training Ribbon.⁶ She was granted a top secret security clearance with access to sensitive compartmented information (SCI) in 2001.⁷

Applicant obtained a master's degree in business administration in December 1986.⁸ She is also a graduate of the Squadron Officer School, the Air Command and Staff College, the Air War College, and the Joint Forces Staff College.⁹ She was married in May 1987, and divorced in May 2000. She has a son born in December 1989.

Financial Considerations¹⁰

There apparently was nothing unusual about Applicant's finances until the time she retired from active duty in February 2009. In 2001, while still on active duty, Applicant had outstanding credit and purchased her residence. Over the next few years, she started investing in a number of investment properties, and eventually owned 12 such properties.¹¹ With the economy and the local real estate market rapidly deteriorating, commencing in 2007, and continuing over the next few years, a combination of circumstances caused her financial problems that made it difficult for her to remain current on all of her accounts. Tenants were unable to maintain their monthly rent payments, some properties became vacant, and others weren't properly maintained by tenants, so Applicant unsuccessfully tried to sell several of those properties.¹² Before she retired, Applicant was earning sufficient income to continue making the mortgage payments on her rental properties.¹³ With her retirement and lengthy period of unemployment (February 2009 until October 2010), she was unable to continue doing so, relying solely on her retirement income.¹⁴

⁶ DD Form 214, *supra* note 4.

⁷ AE A (Letter, dated January 6, 2009).

⁸ Tr. at 6; GE 1, *supra* note 1, at 9.

⁹ DD Form 214, *supra* note 4.

¹⁰ The evidence pertaining to certain allegations is confusing as the SOR does not specify each property or account number, the credit reports do not connect account numbers with specific properties, and Applicant's testimony and statements are sometimes inconsistent and confused. *See, for example*, Tr. at 30-33.

¹¹ Applicant's Answer to SOR, dated October 1, 2012, at 1; Statement, dated June 16, 2012, attached to GE 3, *supra* note 3; Tr. at 21, 28.

¹² Statement, *supra* note 11; Personal Subject Interview, dated March 31, 2011, at 2, attached to GE 2, *supra* note 2, at 2; Tr. at 21-22, 44.

¹³ Tr. at 21-22.

¹⁴ Tr. at 22.

Applicant was forced to prioritize her accounts, and continued paying her home mortgage, her son's tuition, and her routine bills.¹⁵ She couldn't sell the investment properties in the real estate market at that time, and she felt she would deplete her savings by continuing to try to pay those mortgages. Fearing that she would lose the rental properties anyway, Applicant made a business decision and decided to surrender a number of them in a process called strategic defaults or foreclosures.¹⁶ The mortgage holders agreed to take title of those properties and forgive any unpaid mortgage loan balances.¹⁷ She retained five properties, including her residence.¹⁸

The SOR identified six purportedly continuing delinquencies. Of those six allegations, four refer to mortgage loans that were foreclosed, and for which Applicant was issued Form 1099-A, *Acquisition or Abandonment of Secured Property*.¹⁹ The first property, with a fair market value of \$53,569.80, and an outstanding balance of \$47,072.45, was vacant, and foreclosed upon in 2010 (**SOR ¶ 1.c.**).²⁰ The second property, with a fair market value of \$59,150, and an outstanding balance of \$76,224.43, was vacant, and foreclosed upon in 2010 (**SOR ¶ 1.d.**).²¹ The third property, with a fair market value of \$31,280.98, and an outstanding balance of \$50,161.78, was vacant, and foreclosed upon in 2010 (**SOR ¶ 1.e.**).²² The fourth property, with a fair market value of \$23,001, and an outstanding balance of \$62,893.97, was vacant, and foreclosed upon in 2010 (**SOR ¶ 1.f.**).²³

There was another property for which Applicant obtained a mortgage of \$73,800 (**SOR ¶ 1.b.**) that went into default in 2011.²⁴ The mortgage holder foreclosed on the

¹⁵ Personal Subject Interview, *supra* note 12, at 2; Tr. at 22.

¹⁶ Tr. at 23.

¹⁷ Tr. at 23, 45.

¹⁸ Tr. at 28.

¹⁹ According to the instructions for borrower related to the issuance of the Form 1099-A:

Certain lenders who acquire an interest in property that was security for a loan or who have reason to know that such property has been abandoned must provide you with this statement. You may have reportable income or loss because of such acquisition or abandonment. Gain or loss from an acquisition generally is measured by the difference between your adjusted basis in the property and the amount of your debt canceled in exchange for the property, or, if greater, the sale proceeds. If you abandoned the property, you may have income from the discharge of indebtedness in the amount of the unpaid balance of your canceled debt.

²⁰ AF F (1099-A, dated November 30, 2010); GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated March 25, 2011), at 8; Applicant's Answer to SOR, *supra* note 11, at 1; Tr. at 53.

²¹ AF G (1099-A, undated); GE 4, *supra* note 20, at 5; Applicant's Answer to SOR, *supra* note 11, at 1; Tr. at 53.

²² AF H (1099-A, dated August 31, 2010); GE 4, *supra* note 20, at 8; Applicant's Answer to SOR, *supra* note 11, at 1; Tr. at 53-54.

²³ AF I (1099-A, dated July 6, 2010); GE 4, *supra* note 20, at 8; Applicant's Answer to SOR, *supra* note 11, at 1; Tr. at 54.

²⁴ GE 4, *supra* note 20, at 5; GE 5 (Equifax Credit Report, dated April 9, 2012), at 2; Tr. at 31-33.

loan, but in October 2012, Applicant and the mortgage holder agreed to have the unpaid balance of the foreclosed property combined with another property loan that was in default, but not yet foreclosed upon, and Applicant would commence repaying the combined balances.²⁵ Under the agreement, commencing October 2012, Applicant is to make monthly payments of \$909 until September 2027.²⁶ She is timely making her payments.²⁷

There was another property for which Applicant obtained a mortgage of \$48,000 **(SOR ¶ 1.a.)** that went into default in 2011.²⁸ This mortgage was the one that was combined with the foreclosed property under the agreement. Applicant is timely making her payments.²⁹

Applicant currently owns five properties, one of which is owned outright, and is managing to make her routine monthly mortgage payments for the remaining properties.³⁰ All of her other accounts are current.³¹ In June 2012, Applicant completed a personal financial statement in which she indicated a monthly net income, including her military pension, of \$9,890.20; monthly expenses of \$4,257; two mortgages totaling \$1,828.65; and a net remainder of \$3,804.55, available for discretionary spending or savings.³² Her assets include real estate (worth approximately \$350,000), bank savings (approximately \$115,600), stocks and bonds (approximately \$20,293), and a Thrift Savings Plan (worth approximately \$58,371.95).³³

With the exception of informal church seminars on finances, Applicant has never received formal financial counseling or debt consolidation counseling.³⁴ She learned about real estate from her ex-husband who had some experience with real estate.³⁵

²⁵ AE D (Pro Tanto Settlement and Release Agreement, dated October 5, 2012); Tr. at 31-33.

²⁶ AE D, *supra* note 25, at 1.

²⁷ AE C (Receipts and cancelled check, various dates); Tr. at 31.

²⁸ GE 4, *supra* note 20, at 5; GE 5, *supra* note 24, at 2; AE D, *supra* note 25, at 1; Tr. at 31-33.

²⁹ AE C, *supra* note 27.

³⁰ Tr. at 46-49, 57.

³¹ Personal Subject Interview, *supra* note 12, at 2.

³² Personal Financial Statement, undated, attached to GE 3, *supra* note 3.

³³ Personal Financial Statement, *supra* note 32; Various account documents, various dates, attached to GE 3, *supra* note 3.

³⁴ Personal Subject Interview, *supra* note 12, at 2; Tr. at 62-63.

³⁵ Tr. at 26, 42.

Personal Conduct

On March 16, 2011, when Applicant completed her SF 86, she responded to certain questions pertaining to her financial record. Question 26b. asked if, in the last seven years, she had any possessions or property voluntarily or involuntarily repossessed or foreclosed, and Applicant answered “no.” Question 26f. asked if, in the last seven years, she had defaulted on any type of loan, and Applicant answered “no.” She certified that the responses were “true, complete, and correct” to the best of her knowledge, but the responses to the above two questions were, in fact, false.

Applicant subsequently denied intending to falsify her responses, and explained that she had misread the directions, thinking she did not have to list anything that was “not currently past due or had been paid or foreclosed on with no balance.”³⁶ She added: “I thought, because I had – at that time, I had the foreclosures that were paid foreclosures, and I didn’t have any difference to pay back, I didn’t think that was considered as a foreclosure where I was paying money.”³⁷

Work Performance and Community Service

Applicant is active in her community, working closely with her church, as a Sunday school teacher, and speaking at different high schools.³⁸ Her employer nominated her for national recognition, and in 2012, Applicant was selected and recognized by a national professional magazine as a Technology All-Star – one of 200 women of color so recognized – because she has excelled in technology.³⁹

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.”⁴⁰ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁴¹

³⁶ Personal Subject Interview, *supra* note 12, at 1; Applicant’s Answer to SOR, *supra* note 11, at 1; Tr. at 23, 49-51.

³⁷ Tr. at 49-50.

³⁸ Tr. at 25.

³⁹ AE B (Letter from CEO & Publisher, dated June 22, 2012; and *Women of Color Magazine*, dated Fall 2012), at 1, 55; Tr. at 25.

⁴⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴¹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."⁴² The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.⁴³

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."⁴⁴

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."⁴⁵ Thus, nothing

⁴² "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁴³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴⁴ *Egan*, 484 U.S. at 531

⁴⁵ See Exec. Or. 10865 § 7.

in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *inability or unwillingness to satisfy debts* is potentially disqualifying. Similarly, under AG ¶ 19(c), a *history of not meeting financial obligations* may raise security concerns. Commencing in 2007, Applicant started experiencing some financial difficulties, and over the next few years those difficulties increased to the point where she was unable to make routine monthly payments for a number of investment property mortgages. Her mortgages eventually became delinquent. Fearing that she would lose several of the rental properties anyway, Applicant made a business decision and decided to surrender a number of them in a process called strategic defaults or foreclosures. Five mortgages were foreclosed upon. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*. Also, under AG ¶ 20(b), financial security concerns may be mitigated where *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*. Evidence that *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control* is potentially

mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*⁴⁶

AG ¶¶ 20(a) and 20(c) both partially apply, and AG ¶ 20(d) applies. The nature, frequency, and relative recency of Applicant's financial difficulties between 2007 and 2011 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant had extensive military experience and substantial experience in real estate as an investor. Although she had no formal financial counseling or debt consolidation counseling, she did receive informal financial counseling through church seminars on finances. She prioritized her accounts, contacted her creditors, and continued paying her home mortgage, her son's tuition, and her routine bills. Unable to sell the investment properties in the deteriorating real estate market, she was concerned that she would deplete her savings by continuing to try to pay all of those mortgages. Faced with losing the rental properties anyway, Applicant made a business decision and surrendered a number of them as strategic defaults or foreclosures. The mortgage holders took title to those properties, forgave any unpaid mortgage loan balances, and issued her several Forms 1099-A. As to SOR ¶¶ 1.c. through 1.f., Applicant has resolved those accounts. While Applicant also lost one additional property to foreclosure, Applicant and the mortgage holder agreed to combine the unpaid balance of the mortgage loan with the mortgage loan of another property, and Applicant has been paying those two mortgages, now combined into one. As to SOR ¶¶ 1.a. and 1.b., Applicant is in the process of resolving those accounts. Applicant's business-based decisions and subsequent actions under the circumstances confronting her do not cast doubt on her current reliability, trustworthiness, or good judgment.⁴⁷

AG ¶ 20(b) applies. Applicant attributed her financial problems to a variety of circumstances that were largely beyond her control. Those circumstances included the deteriorating economy and the devastated real estate market; tenants who were unable to maintain their monthly rent payments; properties becoming and remaining vacant; the deteriorating condition of some properties; her inability to sell the properties in the plummeting economy; and her lengthy period of unemployment (February 2009 until October 2010). Applicant's indebtedness was not caused by frivolous or irresponsible

⁴⁶ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

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

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

⁴⁷ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

spending, and she did not spend beyond her means. Instead, her financial problems were largely beyond Applicant's control. Under the circumstances, Applicant acted responsibly by addressing her delinquent accounts rather than avoiding them.⁴⁸

Guideline E, Personal Conduct

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), it is potentially disqualifying if there is

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.

In addition, under AG ¶ 16(b), *deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative*, may raise security concerns.

As noted above, Applicant made a business decision and surrendered five investment properties with outstanding mortgages in a process called strategic defaults or foreclosures. On March 16, 2011, when Applicant completed her SF 86, she responded to two questions that asked if, in the last seven years, she had any possessions or property voluntarily or involuntarily repossessed or foreclosed, or if she had defaulted on any type of loan. Applicant answered "no" to both questions. She certified that the responses were "true, complete, and correct" to the best of her knowledge, but the responses to the two questions were, in fact, false. Applicant's responses provide sufficient evidence to examine if her submission was a deliberate falsification, as alleged in the SOR, or merely the result of misunderstanding. She explained that she had misread the directions, thinking she did not have to list anything

⁴⁸ "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.

that was not currently past due or had been paid or foreclosed on with no balance. She contended that because the actions were paid foreclosures, and she did not owe the mortgage lender any additional monies, the actions weren't considered "foreclosures." She denied the false responses were deliberate or an attempt to falsify the material facts. I have considered Applicant's educational background, military career, current professional career, and investment activities in analyzing her actions. Applicant is an intelligent, talented, and experienced individual, but her explanations, to be accepted, require that a substantial degree of unreasonableness be ignored. Furthermore, Applicant's explanation is refuted by the fact that she was already delinquent on one loan, which went into default around the time she completed her SF 86, for which she still owned the mortgage lender money. That was the loan that was subsequently combined with another loan and covered in a settlement and release agreement. If Applicant had acknowledged the deliberate nature of her actions and expressed that it was foolish on her part to have falsified her responses and concealed the truth, her actions might have been considered aberrant behavior out of character for her. However, Applicant clings to her explanation that the actions were not foreclosures, and that she misunderstood the questions. Her position is unreasonable. AG ¶ 16(a) has been established.

During an interview conducted by an investigator from the U.S. Office of Personnel Management (OPM) in March 2011, in response to unspecified questions, Appellant disclosed her foreclosures. AG ¶ 16(b) has not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(a) may apply if *the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts. If 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*, AG ¶ 17(c) may apply. Also, AG ¶ 17(d) may apply if *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*. None of the mitigating conditions apply.

Whole-Person Concept

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

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of

rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁴⁹

There is some evidence in favor of mitigating Applicant's conduct. Her educational background, military career, and current professional career, were outstanding. Until the real estate market collapsed, her investment activities were essentially successful. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁵⁰

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated a "meaningful track record" of debt reduction and elimination. When she was unable to continue making monthly payments for a number of investment property mortgages, they became delinquent. Fearing that she would lose several of the rental properties anyway, Applicant made a business decision and surrendered a number of them as strategic defaults or foreclosures. Five mortgages were foreclosed upon, with Applicant having resolved four such accounts when she received the Forms 1099-A. She is currently in the process of resolving the fifth foreclosed property as well as one property that was delinquent. Applicant's strategic

⁴⁹ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

⁵⁰ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

foreclosures are legally permissible, and have resulted in her financial issues either being resolved or in the process of being resolved.

The disqualifying evidence under the whole-person concept is more substantial, for this is more than simply a case with financial issues. When Applicant completed her SF 86, she responded to two questions and certified that the responses were “true, complete, and correct” to the best of her knowledge, but the responses to the two questions were, in fact, false. She denied the responses were deliberate or an attempt to falsify the material facts. However, Applicant has an outstanding educational background, military career, and current professional career, and her investment activities were extensive. She is an intelligent, talented, and experienced individual, but her explanations, to be accepted, require that a substantial degree of unreasonableness be ignored. Accordingly, I have concluded that she deliberately falsified her responses in an attempt to conceal the truth about her financial problems. Overall, the evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from her financial considerations, but has failed to mitigate the personal conduct issues. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Formal Findings

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

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

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge