



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



In the matter of: )  
 )  
----- ) ADP Case No. 11-08325  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

12/31/2012

**Decision**

Harvey, Mark, Administrative Judge:

Applicant’s SOR alleges 22 delinquent debts or accounts, totaling \$30,406. She has a history of delinquent debt and did not make sufficient progress resolving her delinquent SOR debts. On December 3, 2010, she completed her Electronic Questionnaires for Investigations Processing (e-QIP) (SF 85P) (GE 1), and she falsely denied that she had any reportable delinquent debts. However, she subsequently volunteered information about delinquent debts to an investigator from the Office of Personnel Management (OPM). Personal conduct concerns are mitigated; however, financial considerations concerns are not mitigated. Her eligibility to occupy a public trust position is denied.

**Statement of the Case**

On July 27, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant (hearing exhibit (HE) 2), pursuant to Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised; Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleges trustworthiness concerns under Guidelines F (financial considerations) and E (personal conduct). (HE 2) The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Regulation that it is clearly consistent with the national interest to grant or continue Applicant's eligibility to occupy a public trust position, which entails access to sensitive information. (HE 2) DOHA recommended referral to an administrative judge to determine whether such access to sensitive information should be granted, continued, denied, or revoked.

On August 29, 2012, Applicant responded to the SOR allegations. (HE 3) On October 19, 2012, Department Counsel indicated she was ready to proceed. On October 25, 2012, the case was assigned to me. On November 14, 2012, DOHA issued a hearing notice setting the hearing for December 6, 2012. (HE 1) The hearing was held as scheduled using video teleconference. (HE 1) Department Counsel offered six exhibits (GE 1-6) (Transcript (Tr.) 17), and Applicant offered six exhibits. (Tr. 19-21; AE A-F) There were no objections, and I admitted GE 1-6 and AE A-F. (Tr. 18, 21-22) Additionally, I admitted the SOR, response to the SOR, and hearing notice. (HE 1-3) On December 14, 2012, I received the transcript.

### **Findings of Fact<sup>1</sup>**

Applicant's SOR response admitted responsibility for all of the SOR debts except for the debts described in SOR ¶¶ 1.h, 1.j, 1.k, 1.t, and 1.v. She denied the allegations of intentional falsification made in SOR ¶ 2.a. She was unsure or disputed some of the amounts of the other SOR debts. She also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 24-year-old employee of a defense contractor, who has worked quoting benefits and providers for a medical care provider since July 2010. (Tr. 6, 24; GE 1) In 2007, she earned a graduate equivalency diploma (GED). (Tr. 6-7) In the last several years, she received about 25 college credits. (Tr. 6-7) She was unemployed from January 2002 to October 2004, from June 2006 to October 2006, from April 2007 to October 2007, from August 2008 to October 2008, and from May to July 2010. (April 29, 2011 OPM personal subject interview (PSI)) She worked for a commercial firm from November 2008 to April 2010. (Tr. 31-34) She has never served in the military. (Tr. 6) She is not married. (Tr. 7-8)

Applicant has two children, who are ages four years and four months. (Tr. 7-8) She has not received any financial support from the father of her four-year-old child for six or seven months, and she has not received any financial support from the father of her youngest child. (Tr. 36, 76, 91-93) She is the head of her household. (Tr. 8)

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

## Financial considerations

Applicant's SOR and credit reports list 22 delinquent debts or accounts, totaling \$30,406. The amount of the debts ranged from a repossessed vehicle (SOR ¶ 1.r for \$8,548) and a delinquent student loan (SOR ¶ 1.p for \$6,719) to four debts less than \$80 each (SOR ¶¶ 1.i, 1.s, 1.t, and 1.v). Starting in July 2010, she received a part-time salary of about \$12 per hour from her current employer. (Tr. 25) In December 2010, she became a full-time employee, and she received \$14.50 per hour. (Tr. 24-25) In December 2011, she received a raise to \$14.71 per hour, and in November 2012, her pay was increased to \$15.30 per hour. (Tr. 26; AE B) Her annual salary is now \$31,824. (Tr. 25-26; AE B) She received good performance reviews at her employment. (Tr. 26) Recently, she missed about three weeks of work because her newborn has been ill with a respiratory virus. (Tr. 27-29)

In Applicant's April 29, 2011 OPM PSI, she discussed the delinquent debts on her credit report and indicated she would contact all of her creditors and arrange payment plans. (April 29, 2011 OPM PSI at 13) She said she did not receive financial counseling. (April 29, 2011 OPM PSI at 13)

Applicant's SOR lists three delinquent student loans. The student loans in SOR ¶¶ 1.a (\$2,552), 1.p (\$6,719), and 1.q (\$1,630) are probably included in her loan rehabilitation program. (Tr. 46-47, 55-56) Applicant initially learned that she had six student loans, which totaled about \$15,000. (Tr. 42) She paid a student loan for \$783 on March 22, 2012, and for \$26 on August 6, 2010, according to a June 4, 2012 letter from a creditor. (GE 2 at 4) A collection company sought \$18,996 from Applicant. (Tr. 43; AE C) One student loan collection company started garnishing \$900 monthly from her pay until one of her student loans was paid off in March 2012. (Tr. 70) A collection company notified Applicant that they intended to intercept her tax refund. (Tr. 44) On November 28, 2012, she made her first payment of \$20 to the creditor seeking \$18,996 under a rehabilitation agreement Applicant signed on December 5, 2012. (Tr. 44-46; AE A, C) If she makes nine \$20 payments, her student loan will be rehabilitated to current status. (Tr. 45; AE C) After the rehabilitation period, her payments may increase. (AE C) (Tr. 55-56) Applicant was unsure about the amount owed on her student loans, and she conceded she may owe as much as \$36,660 in student loan debt. (Tr. 97; GE 6) However, the listing of student loans totaling \$36,660 in Applicant's credit report probably has duplications. (Tr. 97; GE 6)

Applicant has been evicted twice, and those two evictions resulted in substantial unpaid debts. (Tr. 72) In September 2008, Applicant was late with her rent on her apartment, and she was evicted. (Tr. 51) The breach of her lease and some damage to the apartment resulted in the \$2,400 debt in SOR ¶ 1.i. (Tr. 51, 55) She asked the collection company seeking collection of the apartment debt to suggest a payment plan; however, she could not afford the proposed payments. (Tr. 52) After her first eviction, she lived with her mother. Then she moved into another apartment. (Tr. 51-55, 71) Her next apartment landlord was seeking \$1,481 from Applicant for one month's rent of \$650 and some charges, which she disputed. (SOR ¶ 1.f) (Tr. 53-54) She did not make any payments to resolve either debt. (Tr. 51-55)

Four of Applicant's medical debts were listed in SOR ¶¶ 1.b (\$533), 1.c (\$650), 1.d (\$666), and 1.k (\$365). (Tr. 56, 61-62) Some of the debts predate 2010. For example the debt in SOR ¶ 1.k went to collection in November 2008. (Tr. 62; GE 6) She was unsure about her responsibility for these debts because she was on Medicaid. (Tr. 56) She did not make any payments to these creditors. (Tr. 57) She did not provide documentation showing she disputed her responsibility for these four medical debts.

Applicant agreed she owed one debt for her cable service. Her SOR listed two debts for cable service in SOR ¶ 1.e for \$349 and in SOR ¶ 1.g for \$390. (Tr. 57-58; GE 6) She asked the creditor about a settlement; however, she did not make any payments. (Tr. 57) The debt in SOR ¶ 1.g for \$390 is mitigated as a duplication of the debt in SOR ¶ 1.e. (Tr. 58-59)

Applicant paid the utilities debt in SOR ¶ 1.h for \$114. (Tr. 59; GE 2 at 15-16) Her insurance company paid the medical debt in SOR ¶ 1.j for \$1,026. (Tr. 61-62; GE 2 at 12)

Applicant ordered contact lenses on the internet when she was 18 and generated the \$75 debt in SOR ¶ 1.i. (Tr. 59-60) The debt in SOR ¶ 1.v (\$75) is mitigated as a duplication of the debt in SOR ¶ 1.i. (Tr. 59-60) She had a settlement offer from the creditor for \$18; however, by the time she was ready to make the payment, she was unable to locate the creditor. (Tr. 61)

The debt in SOR ¶ 1.m for \$1,150 resulted from a cell phone account. (Tr. 63) The debts in SOR ¶¶ 1.n for \$919 and 1.o for \$258 were for overdraft fees from her bank. (Tr. 64-65) The debt in SOR ¶ 1.r for \$8,548 resulted from a repossessed vehicle. (Tr. 66) The debt in SOR ¶ 1.s for \$78 resulted from a bounced check presented at a grocery store. (Tr. 67-68) She was unsure of the origin of the debt in SOR ¶ 1.t for \$71. (Tr. 72) She did not make any payments or take other action to resolve these debts because she was unable to reach an appropriate or reasonable settlement with the creditor, or she has not contacted the creditor. (Tr. 64-67)

The debt in SOR ¶ 1.u for \$357 resulted from a payday loan in 2008 or 2009. (Tr. 73) She paid \$30, and then she decided not to make any additional payments. (Tr. 73)

Applicant completed a budget or personal financial statement (PFS). (Tr. 74; GE 2 at 18) Her PFS lists nine creditors and a single payment of \$93 to one creditor. (GE 2 at 18) She said that she is current on her car payment. (Tr. 81) She has very little money left at the end of each month to address her SOR debts. (Tr. 81-85) She had a new non-SOR delinquent debt owed to a communications company for \$360, and she has been making \$150 monthly payments since July 2012 to address an Internal Revenue Service (IRS) debt of about \$2,000 for tax year 2011. (Tr. 87, 93-95) She has been late on most of her IRS payments. (Tr. 95-96) She is not making any payments to any SOR creditors, except for \$20 per month paid to her student loan account as part of her \$18,996 rehabilitation agreement. (Tr. 88)

In November 2012, she made a \$160 payment and committed to paying a credit restoration company (CRC) \$59 per month to dispute her debts and improve her credit report. (Tr. 88-90; AE D) On December 4, 2012, CRC agreed to assist her with improving her credit rating. (AE D) The CRC agreed to challenge the negative information on Applicant's credit report under the Fair Credit Reporting Act of 1970, Section 168; however, CRC's assistance is limited and does not involve negotiating with creditors and paying *bona fide* debts. (AE D)

### **Personal conduct**

Applicant said she had financial problems after her first child was born in 2008 due to intermittent periods of unemployment. (Tr. 48) She initially said she became aware of her financial difficulties in 2010. (Tr. 47) Later in her hearing, she conceded that she had delinquent debts going back to the age of 18 or for about six years.

Section 22, "Your Financial Record" of Applicant's December 3, 2010 SF 85P asks, "Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government." (GE 1) Applicant answered, "No," and she did not disclose any delinquent debts. (GE 1) Applicant explained, "I'm not sure why I answered no. I guess I didn't understand the question or [I read] the question wrong. I'm not sure." (Tr. 97) She thought that perhaps the financial questions were only seeking information about federal loans. (Tr. 98) She said that at the time she completed her SF 85P, she was not aware that her student loans were delinquent. (Tr. 98) She may not have received information from student loan creditors because they may not have had her correct address. (Tr. 99) Her December 31, 2010 credit report showed 20 delinquent debts. (Tr. 98; GE 4) She was aware that she had non-student-loan delinquent debt when she completed her SF 85P. (Tr. 99)

Applicant's April 29, 2011 OPM PSI indicates that she obtained her credit report in April 2011 and that "she volunteered information to the OPM investigator that she has several accounts that are either delinquent or in collections." (GE 2 at 31)

### **Character Evidence**

Two of Applicant's work-colleagues and friends described her as diligent, caring, responsible, reliable, and trustworthy. (AE E, F) She has received excellent ratings and has been awarded certificates documenting her accomplishments. (AE E) She is a tremendously valuable asset to her employer. (AE E, F)

## 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). The Government’s authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. See *Id.* at 527.

Positions designated as ADP I and ADP II are classified as “sensitive positions.” Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. See Regulation ¶ C8.2.1.

When evaluating an applicant’s suitability for a public trust position, an administrative judge must consider the disqualifying and mitigating conditions in the AG. 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.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to sensitive information. 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 (4<sup>th</sup> 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 and trustworthiness 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 or her security clearance [or access to sensitive information].” 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 [or trustworthiness] determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

The protection of the national security and sensitive records is of paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” Section 7 of Executive Order (EO) 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.”

### **Analysis**

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

#### **Financial Considerations**

AG ¶ 18 articulates the trustworthiness 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 trustworthiness 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 SOR response, and her hearing record. Applicant's SOR alleges 22 delinquent debts or accounts, totaling \$30,406. Some debts have been delinquent since Applicant was 18 years old. 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;<sup>2</sup> and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial conduct does not warrant full application of any mitigating conditions to all SOR debts. I have credited Applicant with mitigating the seven SOR

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<sup>2</sup>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)).



debts in ¶¶ 1.g, 1.h, 1.i, 1.j, 1.p, 1.q, and 1.v for the following reasons: (1) SOR ¶ 1.g for \$390 is a duplication of the debt in SOR ¶ 1.e for \$349; (2) SOR ¶ 1.h is a utilities debt for \$114, which she said she paid; (3) SOR ¶ 1.j for \$1,026 is a medical debt that she said her insurance company paid; (4) SOR ¶¶ 1.i and 1.v both for \$75 are for purchase of contact lens and she said she was unable to locate the creditor; and (5) SOR ¶¶ 1.a, 1.p, and 1.q are student loans and the debts in SOR ¶¶ 1.p and 1.q are merged into the debt in SOR ¶ 1.a, as all of her student loans have been merged together into a single collection account in the amount of \$18,996. I have credited Applicant with paying the IRS \$150 a month, \$160 to CRC, \$20 to address the rehabilitation of her student loans, \$783 to pay a student loan in March 2012, and \$26 to pay a student loan in August 2010. She also paid \$30 to the creditor in SOR ¶ 1.u.

Applicant fell behind on her debts because of changing employment, medical problems of her children, low-paying employment, and being a single mother, who has not received child support payments. She did not describe receipt of any financial counseling. She showed some good faith when she admitted responsibility for some of her SOR debts in her SOR response and at her hearing.

Applicant has not taken reasonable actions to resolve most of her SOR debts. She has two unresolved SOR debts that are less than \$100, and one debt is for a returned check. The circumstances beyond her control were significant; however, she did not adequately explain why she had not made any payments to several of her SOR creditors. She did not provide documentation proving that she maintained contact with her SOR creditors, and she did not provide any documentation showing her attempts to negotiate payment plans with her SOR creditors.<sup>3</sup> There is insufficient evidence that her financial problem is being resolved and is under control. She did not establish her financial responsibility.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a trustworthiness concern stating:

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 [clearance process for a public trust position] or any other failure to cooperate with the [clearance process for a public trust position].

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<sup>3</sup>“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.

AG ¶ 16 describes two conditions that could raise a trustworthiness concern and may be disqualifying with respect to Applicant's denial that she had debts currently delinquent for more than 180 days on her December 3, 2010 SF 85P. Those two disqualifying conditions are as follows:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Section 22 of Applicant's December 3, 2010 SF 85P asks, "Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government." Applicant answered, "No," and she did not disclose any delinquent debts. AG ¶¶ 16(a) and 16(b) apply and further inquiry about the possible application of mitigating conditions is necessary.

AG ¶ 17 provides seven conditions that could mitigate trustworthiness concerns:

(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 [clearance process for a public trust position]. 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.

AG ¶ 17(a) applies. Applicant denied that she had debts over 180 days delinquent. She explained, "I'm not sure why I answered no. I guess I didn't understand the question or [I read] the question wrong. I'm not sure." (Tr. 97) She said that she thought that perhaps the financial questions were only seeking information about federal loans. She said that at the time she completed her SF 85P, she was not aware that her student loans were delinquent. She may not have received information from student loan creditors that her student loans were delinquent because they may not have had her correct address. It is clear that at the time she completed her SF 85P she was confused about her financial situation, and she was not focused on the significance of providing accurate and complete information on this important security document.

An OPM investigator interviewed Applicant 147 days later and Applicant "volunteered" information about her financial predicament. She alerted the Government to the fact that she had a history of financial problems and that she currently had delinquent debt.

The applicability of AG ¶ 17(a) has been limited by several Appeal Board decisions. An intentional omission allegation is not mitigated when an applicant admits the omission after an investigator tells him or her that the Government has already learned facts establishing the omission.<sup>4</sup> If an Applicant provides false information in multiple interviews, voluntary, accurate disclosure during the third interview does not mitigate the falsification concern.<sup>5</sup> In ISCR Case No. 05-10921 at 4 (App. Bd. Apr. 19, 2007) the Appeal Board considered an applicant's claim that he promptly disclosed his firing from employment to an investigator after falsely denying the termination from employment on his security clearance application stating:

. . . Applicant did not disclose his termination from the hotel until he was at his security clearance interview. The . . . investigating agent asked about the hotel in the context of previous employments and Applicant indicated he worked there. The investigator then asked if anyone at the hotel would have anything negative to say about Applicant, at which time Applicant supplied the investigator with a name and the hotel management.

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<sup>4</sup>ISCR Case No. 02-30369 at 5 (App. Bd. Oct. 27, 2006) (sustaining denial of security clearance); ISCR Case No. 04-00789 at 7 (App. Bd. June 28, 2006) (reversing grant of security clearance); ISCR Case No. 99-0557 at 4 (App. Bd. July 10, 2000) (reversing grant of security clearance).

<sup>5</sup>ISCR Case No. 03-00577 at 5 (App. Bd. Dec. 11, 2006) (sustaining denial of security clearance).

Subsequently, Applicant informed the investigator that he had been fired from the hotel.

The Appeal Board in ISCR Case No. 05-10921 at 4 (App. Bd. Apr. 19, 2007) affirmed the administrative judge's decision not to credit applicant with making a "prompt, good faith [effort] to correct the falsification before being confronted with the facts." *Id.* at 4-5. Stated differently, once it becomes apparent to an applicant that an investigator is likely to discover derogatory information, it is too late to receive mitigating credit under AG ¶ 17(a).

In the instant case, Applicant disclosed the omission concerning her delinquent debts before being confronted with any information that made it appear likely the investigator would discover those debts. She fully cooperated with the investigator's follow-up interrogation as indicated by her exhaustive discussion of her finances during the interview. Her failure to disclose financial information on her SF 85P is mitigated. See ISCR Case No. 09-05655, (App. Bd. Aug. 24, 2010) (mitigating Guideline E concern under whole-person concept); DISCR No. 93-1390 (App. Bd. Jan. 27, 1995) (discussing prompt disclosure requirement); ISCR Case No. 98-0422, 1999 DOHA LEXIS 49, (A.J. Jan. 22, 1999) (mitigating Guideline E concern). The personal conduct concern pertaining to Applicant's failure to accurately complete the financial portion of her SF 85P is mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a public trust position 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 public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. 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.

There are some facts supporting mitigation of trustworthiness concerns under the whole-person concept; however, they are insufficient to fully mitigate trustworthiness

concerns. Applicant is a 24-year-old employee of a defense contractor, who has worked quoting benefits and providers for a medical care provider since July 2010. She earned a GED and about 25 college credits. She worked for a commercial firm from November 2008 to April 2010. She has never served in the military. She is not married, and her two children are ages four years and four months. I am confident that she has the ability and maturity to comply with requirements for a public trust position.

Some circumstances beyond her control, such as insufficient income, brief periods of unemployment before August 2010, family medical problems, and the fathers of her two children's failure to pay child support adversely affected her financial circumstances. She disclosed her delinquent debts during her April 29, 2011 OPM PSI. She knows what she must do to establish her financial responsibility. She is making payments to address her federal tax debt, she made a payment to begin a plan with CRS, she made a \$20 payment to start the rehabilitation of her student loans, several debts were duplications, she paid \$30 to the creditor in SOR ¶ 1.u, and two SOR debts were paid. In total, seven SOR debts were mitigated. Additionally, several other non-SOR debts were paid. There is no evidence of violations of her public trust position or disloyalty. She has made some important progress towards mitigation of financial considerations concerns related to her public trust position.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant's SOR alleges 22 delinquent debts or accounts, totaling \$30,406; however, seven of those debts were mitigated. Some debts have been delinquent since she was 18, which was six years ago. She failed to prove that she could not have made greater progress resolving and documenting resolution of her SOR debts. Two unpaid SOR debts are less than \$100 each, including one debt resulting from writing a check with insufficient funds in her account for payment. She owes more than \$18,000 in student loans, and only recently made a \$20 payment to start bringing her student loan account to current status. She was unsure about the total amount of her student loans, and she failed to contact several SOR creditors about the status of her debts. She has not addressed the debt resulting from her repossessed vehicle (SOR ¶ 1.r for \$8,548) or her two evictions (SOR ¶ 1.l for \$2,400 and SOR ¶ 1.f for \$1,481). Her failure to make greater progress paying her debts shows lack of judgment and "raise[s] questions about [Applicant's] reliability, trustworthiness and ability to protect classified information." See AG ¶ 15.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 12968, the Directive, the Regulation, the AGs, and other cited references to the facts and circumstances in the context of the whole person. I conclude Applicant has mitigated personal conduct concerns; however, more documented progress addressing her debts is necessary before she will be eligible to occupy a public trust position.

## Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.f:	Against Applicant
Subparagraphs 1.g to 1.j:	For Applicant
Subparagraphs 1.k to 1.o:	Against Applicant
Subparagraphs 1.p and 1.q:	For Applicant
Subparagraphs 1.r to 1.u:	Against Applicant
Subparagraph 1.v:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

## Conclusion

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

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MARK HARVEY  
Administrative Judge