



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



In the matter of: )  
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----- ) ISCR Case No. 11-09160  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Allison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

05/16/2013

**Decision**

Harvey, Mark W., Administrative Judge:

Applicant mitigated personal conduct concerns arising from her terminations from three previous employments. Her statement of reasons (SOR) lists 23 delinquent or charged-off debts and a bankruptcy. Her SOR debts include a foreclosed house, two repossessed vehicles, and delinquent student loans. She mitigated several debts and her student loans are in deferment status; however, she did not make sufficient progress resolving her financial problems. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 18, 2011, Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (GE 1) On November 14, 2012, the Department of Defense (DOD) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) the President promulgated 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 DOD

was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and it recommended that her case be submitted to an administrative judge for a determination whether her clearance should be granted, continued, denied, or revoked.

On December 12, 2012, Applicant submitted her response to the SOR. (HE 3) On February 12, 2013, Department Counsel indicated she was ready to proceed on Applicant's case. On February 14, 2013, DOHA assigned Applicant's case to me. On March 25, 2013, Applicant's hearing was scheduled for April 18, 2013. Applicant's hearing was held as scheduled using video teleconference. Department Counsel offered ten exhibits, and Applicant offered three exhibits. (GE 1-10; AE A-C) (Tr. 20-24) There were no objections, and I admitted GE 1-10 and AE A-C. (Tr. 21, 25) Additionally, I admitted the hearing notice, SOR, and Applicant's response to the SOR. (HE 1-3) On April 26, 2013, I received the transcript. I held the record open until May 2, 2013, to permit the Applicant to submit additional documentation. (Tr. 105) On May 6, 2013, Department Counsel provided Applicant's post-hearing submission, which was admitted into evidence without objection. (AE D)

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

Applicant's SOR response admitted responsibility for the bankruptcy in SOR ¶ 1.a, for the SOR debts in ¶¶ 1.b, 1.c, 1.h-1.t, 1.v-1.x, and that she was terminated from employment relating to 2.a-2.c. (HE 3) For SOR ¶¶ 2.a-2.c, she said that there were different reasons for her termination from employment than the reasons cited in the SOR. She also provided mitigating information concerning her finances. Applicant's admissions are accepted as findings of fact.

Applicant is a 33-year-old information technology specialist employed by a defense contractor, since December 2011. (Tr. 6, 50; GE 1) She graduated from high school in 1997, and she earned an associate's degree in networking in 2009. (Tr. 6-7) She served in the military from 1998 to 2001 (2 ½ years). (Tr. 8, 29) She received a security clearance and access to sensitive compartmented information (SCI) in 1998. (Tr. 7) When she left active duty, she was a private first class. (Tr. 8) In the military, she received negative counseling for writing bad checks. (Tr. 29-31) A warrant was issued for Applicant's arrest for writing three bad checks. (Tr. 31) She received a general discharge under honorable conditions because she was a single parent without a satisfactory family care plan. (Tr. 8-9) She was unemployed for two or three months after leaving the Army. (Tr. 32) She married in 2009, and her three children are ages 6, 11, and 13. (Tr. 9-10)

Applicant and her husband were living in another state. (Tr. 11-12) Applicant was offered employment in the state where she lives now. (Tr. 11-12) They quit their jobs

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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.

and moved to the state where they live now. Her husband has not found employment since they relocated in 2010. (Tr. 12)<sup>2</sup>

### **Financial considerations**

Applicant's SOR lists 23 delinquent or charged off debts and a bankruptcy. Her SOR debts include a foreclosed house, two repossessed vehicles, and student loans. Three SOR debts are for \$100 or less.

In 2003, Applicant filed for bankruptcy because she had an excessive amount of debt and had cosigned for a vehicle that was repossessed. (Tr. 52-54) In November 2003, her unsecured, nonpriority debts were discharged under Chapter 7 of the Bankruptcy Code. (SOR ¶ 1.a response)

The debt in SOR ¶¶ 1.b (\$143) was for utilities, and the debt in 1.c (\$24) was for cable service. (Tr. 56) Applicant said she paid these two debts. (Tr. 56-57) Although she did not provide proof of payment, I am crediting Applicant with paying these two debts.

Applicant denied responsibility for the three debts in SOR ¶¶ 1.d (\$487), 1.e (\$462), and 1.f (\$448). (Tr. 25, 57) She said her checks were stolen in 2003, and there are charges on her accounts that she did not make. (Tr. 26) She made a report of the offense to the police, and a police report documents her allegations of theft. (Tr. 26) She disputed these three debts, and they no longer appear on her credit report. (Tr. 57-58)

### **Student Loans**

Applicant admitted responsibility for the student loan debt in SOR ¶ 1.h (\$1,921); however, now she may be disputing it. (Tr. 58-60; SOR response) In 2007, she attended a college, and she took out a student loan. (Tr. 58-60) She was unsure whether she owed the student loan in SOR ¶ 1.r for \$1,356. (Tr. 60, 73) She initially placed the debt in SOR ¶ 1.r into her debt consolidation plan. (AE A at 5) She decided to dispute her responsibility for the debt; however, she did not have any documentation showing the basis of the dispute. (Tr. 74) She removed the debt in SOR ¶ 1.r from her debt consolidation plan. (AE D)

Applicant owed about \$76,000 in student loans. (Tr. 85-86; AE D) She has been out of school since 2009. (Tr. 86-87) She obtained a hardship deferment when she was unemployed; however, she has been consistently employed since 2010. (Tr. 86-88) In 2010, Applicant was only earning \$40,000 per year. (Tr. 89) Although her salary increased to \$58,000, she was still able to continue the hardship deferment. (Tr. 89) She wants to continue the deferment because she wants to pay her other bills and support her family. (Tr. 87) On August 15, 2012, her most recent deferment was approved, and it will continue until August 14, 2013. (AE D) Interest continues to accrue at the rate of 6.625% per year. (AE D) Annual interest charges on the \$76,000 are

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<sup>2</sup> Applicant's husband is a convicted felon, and he may be behind on his child support. (GE 2 at 6) Her husband's predicament places additional financial pressure on her family.

\$5,035 or \$419 per month. On April 18, 2013, she was in the process of applying for a continuation of her hardship deferment of her student loans. (Tr. 85-88) Applicant said she would provide documentation showing her request for deferment. (Tr. 90-93) She did not provide a copy of her requests for deferment of her student loans.<sup>3</sup>

Applicant recognized the debt in SOR ¶ 1.i (\$393) as her cable debt and the debt in SOR ¶ 1.j (\$591) as her internet bill. (Tr. 62-63) She said both debts were paid in February 2013. (Tr. 62-63) Although she did not provide proof of payment, Applicant's statement that she paid these two debts in February 2013 is accepted as credible.

Applicant recognized the debt in SOR ¶ 1.k (\$100) as her medical debt. (Tr. 63) It has not been paid. (Tr. 63)

The debt in SOR ¶ 1.l (\$670) is Applicant's telecommunications debt. (Tr. 63) It is duplicated in SOR ¶ 1.u (\$1,178). (Tr. 64) It has not been paid, and it is not included in her payment plan. (Tr. 64) She plans to pay it off on her own. (Tr. 64)

The debt in SOR ¶ 1.m (\$1,317) is Applicant's telecommunications debt. (Tr. 65) She did not indicate that the debt was paid.

The debt in SOR ¶ 1.n (\$4,249) resulted from repossession of two of Applicant's vehicles in 2008. (Tr. 67) She has not made any payment to address this debt. (Tr. 67)

The debt in SOR ¶ 1.o (\$97,928) resulted from a mortgage. (Tr. 68) Applicant purchased a home in 2008 for \$89,000 using a Department of Veteran's Affairs (VA) loan. (Tr. 68, 72) She made a \$3,000 down payment. (Tr. 69) She made her mortgage payments for eight or nine months, and then she stopped making her payments because she was unemployed and could not afford her mortgage payments. (Tr. 69-70) She estimated that she owed about \$40,000 from the foreclosure. (Tr. 70) She said she had "been contacting [the creditor] since the foreclosure in 2011." (Tr. 71) She most recently spoke to someone employed by the creditor in May 2012. (Tr. 72) She was unsure whether she owed the VA or the creditor. (Tr. 72)

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<sup>3</sup>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)). It is unclear how Applicant was able to obtain a deferment due to financial hardship while making the amount of income Applicant was receiving from her current employer. However, I have not considered the possibility that she obtained the deferment by understating her income or her husband's criminal record for any purpose because these issues were not sufficiently developed at her hearing.

The debt in SOR ¶ 1.q (\$669) resulted from a cell phone account that Applicant opened on behalf of her cousin. (Tr. 73) Applicant has not made any payments to address this debt. (Tr. 73)

Applicant admitted responsibility for the medical debt in SOR ¶ 1.s (\$440). (Tr. 74; SOR response) She was unsure of the origin or holder of the debts in SOR ¶¶ 1.s, 1.t (\$217), and 1.v (\$201). (Tr. 75-76) She did not make any payments to address these three debts. (Tr. 75-77)

Applicant paid the utility debt in SOR ¶ 1.w (\$141), and she provided proof of payment. (Tr. 76-77; AE A) It was the first debt paid under Applicant's debt consolidation plan. (AE A)

### **Debt consolidation plan**

On December 12, 2012, Applicant enrolled in a debt consolidation payment plan. (Tr. 65; AE B) Her plan included credit counseling and generation of a budget. (AE B) She initially included four debts in the program. (Tr. 66) The debt in SOR ¶ 1.w (\$141) was paid; the debts in SOR ¶¶ 1.r (\$1,356) and 1.x (\$844) were dropped from the program (Tr. 75, 76, 78; AE A, D); the debt in SOR ¶ 1.m (\$1,317) was kept in the program; the credit card debt in SOR ¶ 1.p (\$731) was added into the program (Tr. 72-73, 79; AE D); and a non-SOR credit card debt for \$1,189 was added to the program. (Tr. 78; AE D) In sum, there are currently two SOR debts and one non-SOR debt in her debt consolidation plan. (AE D)

Applicant agreed to pay \$184 monthly into the plan. (Tr. 66) She made three \$184 payments (January, February, and March 2013), and \$135 in April 2013. (Tr. 67, 85; AE D)

Applicant drives a 2009 Chevy Impala. (Tr. 79) Her monthly car payment is \$425, and it is current. (Tr. 80) At the end of the month she has about \$450 left after all bills are paid. (Tr. 80)

Applicant has a judgment against her for delinquent state taxes of \$400 owed from 2007. (Tr. 80-81) Although she has not made any payments, she planned to pay her state taxes. (Tr. 81)

Applicant paid four debts and she plans to pay the remainder of her debts. (Tr. 82) She intends to use the debt consolidation plan to pay three more debts. (Tr. 82) The fathers of two of her children owe her a total of about \$34,000 in delinquent child support. (Tr. 85)

She lost her house and cars when she lost her employment. (Tr. 28) She promised to keep her finances in current status. (Tr. 28) Applicant disclosed her financial problems on her SF 86, Office of Personnel Management (OPM) personal subject interview (PSI), responses to DOHA interrogatories, SOR response, and at her hearing.

## Personal conduct

The SOR alleges that Applicant was terminated from employment on three occasions. In 2003, Applicant was terminated after less than a year at her employment for falling asleep. (Tr. 36) She said she told her supervisor that she was on medications, and her supervisor responded that she should not have come to work under the influence of medications. (Tr. 40) At her hearing, she said she was under the influence of her medications for migraine headaches; however, in her SF 86 she said the medication causing her to be sleepy was for her cold. (Tr. 36-37) In her response to DOHA interrogatories she said she was on medication prescribed by a doctor for “back pain and it caused drowsiness.” (Tr. 38) She noted she takes muscle relaxers for back pain. (Tr. 38) She explained that before her hearing she “researched the information” and found out the medication was for her migraines and not for a cold. (Tr. 37) Before her DOHA hearing, she went to her medicine cabinet to find out when her medications were issued, and she still has medications in her cabinet from 2003. (Tr. 39) She attempted to explain her inconsistent statements by contending that she did not consider the matter of what medication she was taking to be important—the important issue is that she was on medication that made her fall asleep. (Tr. 39)

From July to September 2005, Applicant worked for a financial organization. (Tr. 40) She left that employment and worked for a corporation for about a year. (Tr. 40-41)

From 2006 to 2008, Applicant worked in information technology; however, she was fired because her employer accused her of “huffing” or inhaling illegal intoxicants. (Tr. 41-42; GE 2 at 5-6) Applicant had a bottle of rubber cement provided by her employer on her desk at work. (Tr. 42-43) She used the rubber cement to repair cracks in a keyboard or if a piece fell off. (Tr. 42) She explained why a straw was found in the rubber cement as follows:

[She] stuffed the straw from the canned air into the rubber cement to see if [she] could freeze the little amount [of rubber cement] that was left [in the bottle]. Because of doing that, people assumed that [she] was using that to inhale intoxicants. That wasn’t my thing. I was just trying to figure out if the canned air was cold enough to freeze the rubber cement. (Tr. 43)

Applicant said, a rumor was started at her employment that she was “huffing” at work, and someone told a supervisor. (Tr. 26) She said she announced to her coworkers that she was going to try to freeze the rubber cement, and she did not understand how it could be “misconstrued as I’m huffing.” (Tr. 44) Her son was sick, and Applicant went home from work. (Tr. 27) Her employer called her later and told her not to come to work on Monday. (Tr. 27) Her employer investigated the allegation without interviewing Applicant, and no drug test was conducted. (Tr. 27) She was able to receive unemployment compensation because the state determined her firing was without good cause. (Tr. 27, 94-95; GE 2 at 8)

In 2009, Applicant worked for four employers from one to three months. (Tr. 45-48) She quit one job and was terminated because of contract changes from the other

three. (Tr. 45-48) Between jobs, there were periods of unemployment of one to three months. (Tr. 45-48) In April 2010, she was terminated from her employment for being late to work, and the contract was being terminated. (Tr. 48-49)

In 2011, Applicant worked for three employers, and she left her employments because she was offered a better position. (Tr. 50-51) In December 2011, Applicant was hired by her current employer. (Tr. 50) She has had three promotions and now makes \$35 an hour or about \$73,000 annually. (Tr. 52)

### **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 that, “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 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 and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (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.

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 protect or 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. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision on any express or implied determination as to 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 (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 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.” 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**

The relevant security concerns are under Guidelines F (financial considerations) and E (personal conduct) with respect to the allegations set forth in the SOR.

#### **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 SOR response, and her hearing record. Applicant’s SOR lists 23 delinquent or charged off debts and a bankruptcy. Her SOR debts include a foreclosed



house, two repossessed vehicles, and delinquent student loans. Three SOR debts are for \$100 or less. She did not make payments to the SOR creditors as agreed. 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>4</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 conduct in resolving her delinquent debt does not warrant full application of any mitigating conditions to all of her SOR debts. However, Applicant is credited with mitigating the following SOR allegations: ¶ 1.a because her bankruptcy discharge of her debts was almost ten years ago; ¶ 1.b (\$143), ¶ 1.c (\$24), ¶ 1.i (\$591),

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<sup>4</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)).

¶ 1.j (\$591), and ¶ 1.w (\$141) because they were paid; ¶ 1.h (\$1,921) and ¶ 1.r (\$1,356) because her student loans are in deferment status; and ¶ 1.u (\$1,178) because it is a duplication of the debt in ¶ 1.l (\$670).

Applicant disputed her obligation to pay the debts in SOR ¶ 1.d (\$487), ¶ 1.e (\$462), and ¶ 1.f (\$448) because of identity theft, and they were removed from her credit report. These three debts are mitigated under AG ¶ 20(e).

Applicant received financial counseling and is making payments into a debt consolidation plan that is addressing the two SOR debts in ¶ 1.m (\$1,371) and ¶ 1.p (\$731). These two debts are mitigated. Her financial counseling should improve her ability to budget and help her avoid future delinquent debt. Applicant was unemployed or underemployed for several years, and her unemployment ended in December 2011, when she began working for her current employer. She currently earns \$35 an hour and her annual pay is \$73,000. Unemployment and underemployment for her and her husband are circumstances beyond her control. She showed some good faith when she admitted responsibility for most of her SOR debts, and paid or otherwise resolved 14 SOR debts.

Applicant has not provided documentation establishing that she has taken reasonable actions to resolve the debts in the following SOR paragraphs: 1.k (\$100), 1.l (\$670), 1.n (\$4,249), 1.o (\$40,000), 1.q (\$669), 1.s (\$440), 1.t (\$217), 1.v (\$201), and 1.x (\$844). 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 the nine SOR creditors.<sup>5</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 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.

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<sup>5</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 three conditions that could raise a security concern and may be disqualifying in this case:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of . . . or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .

All three disqualifying conditions apply. The Government produced substantial evidence that Applicant was terminated from employment under adverse circumstances on three occasions. There is substantial evidence that she violated rules, and her employers terminated her based on the employers' beliefs of her malfeasance. Her conduct and professional reputation adversely affects her personal, professional, and community standing. Further analysis concerning 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.

AG ¶¶ 17(c) and 17(f) apply. The allegation that Applicant was sniffing glue at work or spilled chemicals is not substantiated in light of her adamant denial of misconduct and the state finding that she was not terminated for misconduct. Her being late for work and violating the dress code several years ago is too minor and stale to cause a personal conduct security concern. Appellant's current employment is recent, positive evidence that she has overcome the problems that resulted in her terminations. Personal conduct concerns are mitigated.

### **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. 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 security concerns under the whole-person concept; however, they are insufficient to fully mitigate security concerns. Applicant is a 33-year-old information technology specialist, who has been working successfully for her employer since December 2011. She is a high school graduate with an associate's degree in networking. She served in the military from 1998 to 2001 (2 ½ years); she received a security clearance and access to SCI; there are no allegations of security violations; she was a private first class when she left active duty; and she received a general discharge under honorable conditions because she was a single parent without a satisfactory family care plan. After leaving the Army, she was unemployed several times from one to three months, and she changed jobs frequently. She married in 2009, and her three children are ages 6, 11, and 13. Some circumstances beyond her control, such as insufficient income, unemployment, and underemployment of herself and her husband adversely affected her financial circumstances. I am confident that she has the ability to comply with security requirements. She is an intelligent person who knows what she must do to establish her financial responsibility. I credited her with mitigating the debts in SOR ¶¶ 1.a to 1.j, 1.m, 1.p, 1.r, 1.u, 1.w because they were either paid, in payment plans, or successfully disputed. Her ability to retain her current employment and receive promotions shows she is providing excellent work performance, diligence, and trustworthiness to her employer.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a long history of financial problems. In the military, she received negative counseling for writing bad checks. A warrant was issued for Applicant's arrest for writing three bad checks. Her debts were discharged under Chapter 7 of the Bankruptcy Code in 2003. Applicant failed to mitigate nine SOR delinquent debts, totaling about \$47,430. She could have made greater progress resolving and documenting resolution of these nine SOR debts. She did not provide documentary proof that she made any payments to any of these nine SOR creditors. Although I have credited her with mitigating her student loans because they are in deferment, when her deferment expires, interest alone will be about \$5,000 per year. Her failure to establish her financial responsibility shows lack of judgment and raises unmitigated questions about Applicant's reliability, trustworthiness and ability to protect classified information. See AG ¶ 15. More financial progress is necessary to fully mitigate security concerns.

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. Personal conduct concerns are mitigated; however, financial considerations concerns are not mitigated. For the reasons stated, I conclude she is not eligible for access to classified information.

## 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.j:	For Applicant
Subparagraphs 1.k and 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n and 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraphs 1.s and 1.t:	Against Applicant
Subparagraphs 1.u:	For Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w :	For Applicant
Subparagraph 1.x:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a to 2.c:	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 security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge