



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 11-14178 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Kathryn MacKinnon, Esq., Deputy Chief Department Counsel
For Applicant: *Pro se*

08/20/2013

Decision

MASON Paul J., Administrative Judge:

Applicant’s financial problems began in May 2008, when she took out a \$12,000 debt consolidation loan that she could not afford. She compounded her financial difficulties when she permitted a friend to take possession and assume the monthly installment payments of her car. Though the consolidation loan has been in a charge off status since July 2009, her sporadic repayment record, combined with the resolution of two other listed debts, culminates in a finding for Applicant under the financial considerations guideline. However, her pattern of deliberate falsifications over an eight-year period of Government security applications and a 2011 interview results in a finding against her under the personal conduct guideline. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP), Government's Exhibit (GE) 1, on January 3, 2011. She certified additional security forms that will be discussed in Findings of Fact. She was interviewed by an investigator from the Office of Personnel Management (OPM) on March 29, 2011, and June 23, 2011. The interview summaries and Applicant's interrogatory responses appear in GE 8, dated January 13, 2013. In the space provided for corrections and modifications to the summaries, Applicant corrected the last name of the person who attended an April 2008 event with her. She also indicated that a financial statement, an updated financial statement, and a civil suit dismissal were attached to her responses. Financial statements are not attached to GE 8. The civil suit dismissal appears in Applicant's Exhibit (AE) Q. Applicant agreed that the two summaries could be admitted into evidence at a hearing to determine her security suitability. (GE 8)

On March 13, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant's answer to the SOR was notarized on April 3, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 14, 2013, for a hearing on June 7, 2013. The hearing was held as scheduled. GE 1, 2, 4, 5, 6, 7, 8, and 9 were admitted in evidence without objection. GE 3 was admitted in evidence over Applicant's objection for reasons addressed below in Rulings on Procedure. Applicant's 19 exhibits (AE A-S) were admitted without objection. The transcript (Tr.) was received on June 19, 2013. The record closed on June 19, 2013.

Rulings on Procedure

Applicant objected to GE 3. She did not believe the document met the scope of the investigation, which would have dated back seven years. The reason for her objection relates to the weight that should be ascribed to the document, but the reason does not preclude the admissibility of the document. (Tr. 20-24) The exhibit is relevant to SOR 2.d of the SOR and is probative in assessing Applicant's veracity during the security investigation.

Findings of Fact

The first paragraph of the SOR contains four allegations under the financial considerations guideline. Applicant admitted SOR 1.a, and 1.c with explanations. She denied SOR 1.b and 1.d as representing the same account which she satisfied in February 2013. (AE N) The second paragraph contains five allegations under the personal conduct guideline. Applicant admitted SOR 2.a and 2.b. She denied SOR 2.c, 2.d, and 2.e, explaining that she did not clearly recall the security form questions. During her professional career, she has always been consistent in her explanations to the other Government agencies (AGA) about her marijuana use in high school. She indicated the drug information she provided to the OPM investigator in March 2011, were only estimates of her marijuana use because her use was over 10 years ago. Applicant's admissions will be included in the following factual findings.

Applicant is a 30-year-old single mother with a year-old child. She anticipates marriage in the near future. She has been a senior program analyst with a defense contractor since October 2012. Except for a period between September 2008 and November 2008, Applicant has been continuously employed since 2002. She received a bachelor's degree from a university in June 2007. She also attended one semester of graduate school that she did not disclose on her e-QIP because she did not feel it was relevant to her not graduating. No additional information was provided. Applicant has held a security clearance since August 2002. (GE 1 at 12-22, 32-34; GE 8 at 9; Tr. 103-104)

Financial Considerations

In her Answer to the SOR, Applicant provided explanations for her financial problems. She asserted that most of her debts arose during the nationwide recession of 2009 and 2010. She indicated that currently she has only three credit cards with low total balances and a student loan debt that has never been delinquent. With the assistance of financial counselors and a credit counseling service, she has successfully developed a debt management plan that proves she is handling her financial obligations. The delinquent debts will be discussed in the order they appear in the SOR.

SOR 1.a, credit union delinquent debt, \$12,000. The account was opened in May 2008 and became delinquent in December 2008. In her March 2011 interview, Applicant explained that she took out the loan in the summer of 2008 to pay off other debts with one low-interest monthly payment. She missed the first payment because of unemployment from September to November 2008. She was unable to sustain payments under a revised payment plan. In July 2009, she obtained a credit report and discovered the debt was charged off. In the fall of 2009, she was advised by the creditor that when payments were received on a

a consistent basis, they would consider removing the account from a charged-off status. Complicating her efforts to bring the account to a current status was an illness in October 2009 and surgery in October 2010. (GE 8 at 3-4)

Applicant provided a two-page ledger of sporadic payments to the credit union between 2010 and April 25, 2013. After receiving a letter from Applicant about actions taken to address the delinquent account, the credit union notified her in May 2013, that the credit agencies would be advised about the status of the account on a monthly basis. The credit union also indicated when the account was satisfied, the credit agencies would be notified that "Account paid in full was a charge off." Applicant indicated that the credit counseling service documents also relate to SOR 1.a. I find the documents have limited probative weight to the debt because there is no indication Applicant officially enrolled in the plan. A list of delinquent debts was prepared and a proposed monthly payment of \$503 was scheduled to begin in January 2012. However, Applicant never officially enrolled in the plan. Accordingly, Applicant's undocumented testimonial claim of having a previous relationship with the counseling service between 2005 and 2008 has negligible probative value. (GE 8 at 3; AE G, H, I, J, K, L, M; Tr. 106-107)

SOR 1.b, auto installment account, \$2,057. The account was opened in June 2006 and became delinquent in December 2012. Applicant agreed to let her friend take her car and assume the car payments in approximately November 2010. When the friend could not maintain the payments, Applicant resumed the payments to restore the account to current status, though her effort was hampered during her pregnancy leave in 2012. She was notified by letter on February 19, 2013, that on February 4, 2013, the account was "paid charge-off." Five of the account numbers in the Government's exhibit match the account numbers in Applicant's exhibit. The account is resolved in Applicant's favor. SOR 1.d is a duplicate entry of SOR 1.b. (GE 9; AE N; Tr. 88, 110)

SOR 1.c, installment auto account, past-due amount of \$893, with a balance of \$18,000. The account was opened in November 2010, and became delinquent in June 2012. On May 21, 2013, Applicant verbally authorized the finance company to transfer \$533 from her bank account on May 31, 2013, and \$523 on June 15, 2013. On June 4, 2013, her installment account balance was \$16,679. The delinquency is resolved in her favor. (GE 9; AE O, P); Tr. 112-114)

Personal Conduct

In an introductory paragraph to her answer under the personal conduct allegations of the SOR, Applicant noted that because the drug use took place during her high school years, it was outside the scope of her re-investigation in 2011 and therefore irrelevant. She insisted that she had been truthful about the drug use. The allegations under paragraph 2 will be discussed in chronological order.

SOR 2.e, Questionnaire for National Security Positions (SF 86), executed by Applicant on May 14, 2002. In response to Section 24 of the security form requiring information of illegal drug use since the age of 16 or in the last 7 years, Applicant answered “no.” She did not disclose her marijuana use from age 14 to 17, ending in November 2000.

In her answer to the SOR, Applicant indicated had no clear recollection of her “no” answer on the May 2002 questionnaire but claimed she provided the information in subsequent security evaluations and interviews. She provided truthful information about her teenage drug use to the OPM investigator in March 2011. (SOR answer)

Applicant testified that the May 2002 security form was her first experience with this kind of application form. She stated, “I was ignorant to all the facts and how this might relate to me years down in the future, what I might be doing ten, fifteen years from the point.” She checked “no” to Section 24 of the form because she was no longer using marijuana, “so therefore to me it wasn’t relevant.” She pointed out that she supplied truthful information about her marijuana use in the supplemental application form to AGA in September 2003. (GE 5; Tr. 100-102)

SOR 2.d, application for employment by AGA, July 1, 2003. In response to question #1 inquiring whether Applicant used marijuana during the last three years, Applicant answered “no” rather than “yes.”¹ In her answer, Applicant furnished information similar to what she had already provided under SOR 2.e. She reiterated that she was consistent in supplying the information to AGA as well as the OPM investigator in 2011. (SOR answer)

Applicant testified she was 20 years old in July 2003, when she completed the form. She hastily checked “no” to the marijuana use question because she had never filled out a form like this before. A lack of guidance contributed to her “no” answer because no one told her that all information had to be disclosed. Since she was not using marijuana when she filled out the form, she did not think the question was relevant. She explained that before she was scheduled for the polygraph, she provided the truth about her drug use because it was required for employment with AGA and not because of the threat of having to take the polygraph. Though Applicant indicated in GE 5 that she used marijuana about 18 times between age 14 and 17, she declined to say her “no” answer to the frequency of use question in GE 3 was false. (GE 3 at 14; GE 4; GE 5; Tr. 99-102, 137, 141)

SOR 2.c, Questionnaire for National Security Positions (SF 86), executed by Applicant on September 20, 2005. In response to Section 24 of the security form requiring

¹ Page numbers in GE 3 appear at the bottom of the page. Question #1 and Applicant’s response appear at page 14 of GE 3. Applicant also answered “no” to the second question of whether she had used marijuana more than 15 times. Though unalleged in SOR 2.d, Applicant’s false answer to the frequency of use question has a negative impact on her general credibility.

information of having used illegal drugs since the age of 16 or in the last 7 years, Applicant answered “no.” She did not disclose her marijuana use from age 14 to 17, ending in November 2000.

In her answer to the SOR, Applicant indicated no clear memory of her “no” answer to the September 2005 question. As she had responded to SOR 2.d and 2.e, Applicant claimed she subsequently disclosed all drug information with personnel at AGAs. She again referred to the truthful information she provided to the OPM investigator in 2011. (SOR answer; GE 2)

Applicant testified that the “no” answer was entered on the September 2005 security form because “at the time I had not experimented with drugs in any way [and] probably being hasty and just checking through and not paying attention to the scope of the dates and everything.” (GE 2; Tr. 95, 97-98, 134-139)

SOR 2.b, Applicant’s January 3, 2011 e-QIP, Section 22: Police Record. In the explanatory section of the question, an applicant is required to report information regardless of whether the charge was expunged, sealed, stricken from the record or dismissed. Responses are for a 7-year or a 10-year time frame, depending on the type of investigation. The applicant is directed to exclude any fines of less than \$300 for traffic offenses that do not involve alcohol or drugs. In her March 2011 interview, Applicant disclosed an April 2008 offense for open alcohol container, but not the driving, attempting to drive under the influence of alcohol charge and three related charges that she was cited for in April 2009.

In her answer to the SOR, she indicated that the length and detail of the January 2011 e-QIP contributed to her misunderstanding of the Section 22 question. She interpreted the question to apply to only criminal offenses. She maintained that she provided full details of the April 2009 incident to the OPM investigator in the March 2011 interview, including the fact that she was not charged, fined, or otherwise affected except by the civil judgment. She indicated she provided more details in the June 2011 interview. (SOR answer, GE 8 at 7; Tr. 95)

Applicant testified that she did not include the April 2009 incident on the January 2011 e-QIP because she was not charged and she did not consider her citation a traffic offense. No further information was provided. Applicant conceded that the explanatory section to the question (Section 22) did not allow her to exclude traffic offenses that involved alcohol. (Tr. 95, 119)

SOR 2.a, March 29, 2011 interview. In her March 2011 interview, Applicant told the investigator that other than the April 2008 citation, she had not been issued a summons, citation, or ticket to appear in court in a criminal proceeding. She did not disclose the citations related to the four April 2009 charges. Instead, she explained she was involved

in an accident with a state government vehicle and was eventually notified to come to court and pay a judgment. (GE 8 at 8)

In her answer to the SOR and at the hearing, Applicant stated she did not fully understand the question asked by the investigator during the March 2011 interview or when she read it on her January 2011 e-QIP. Applicant noted that she provided full details of the April 2009 incident in the June 2011 interview and emphasized she was not trying to misrepresent the facts. In addition, she did not disclose the April 2009 citation because she was not found guilty, the charge was dismissed, and the charge was a traffic offense. At the hearing, Applicant reiterated her position that she believed question #22 of the January 2011 e-QIP applied to criminal charges. She also noted that the four-hour long March 2011 interview, with the excessive time spent on drug use and dates of use, caused her to become disengaged and irritated. (SOR answer; GE 8 at 1-2; Tr. 91-93, 95, 123-124)

Applicant testified she was surprised to be called for a second OPM interview in June 2011. She then consulted her facility security officer (FSO) who apparently made no distinction between a civil or criminal proceeding during their discussion. The FSO told Applicant, "that if you feel as though it's something that might come up and that you want to be totally honest about, you need to go ahead and tell the truth." Applicant indicated she provided full details in the June 2011 interview about the April 2009 incident. She admitted being charged with suspicion of driving under the influence of alcohol. (GE 8, June 2011 interview, at 1-2; Tr. 93-94, 125-127)

At a subsequent point in the cross-examination of Applicant regarding the June 2011 interview, she was asked whether she told the OPM investigator about other citations arising from the April 2009 incident. She admitted she did not disclose a charge of attempting to elude a police officer. She did not reveal she was also charged with failure to stop after an accident involving damage and a charge of failing to return and remain at the scene of an accident. Applicant indicated that she told the June 2011 interviewer that she voluntarily pulled her car over after the accident. She denied trying to elude a police officer. Rather, she was trying not to impede the flow of traffic out of the parking lot as well as on the street. She believed the police officer who cited her misinterpreted her actions. Applicant restated that the charges were dismissed and she was not arrested or detained. She indicated, "I wasn't very specific in outlining each of these citations related to this one incident in my second interview with [the OPM investigator]." (GE 7; GE 8, June 2011 interview at 1; Tr. 131-134)

Character Evidence

Witness 1 testified that she has known Applicant since 2010. She was the Government leader of a mobility team at AGA with Applicant responsible for all administrative duties. Witness 1 provided six verbal evaluations about Applicant to her

Government supervisor. She considered Applicant to be a very professional employee who completed projects in a timely manner. Applicant was trustworthy in how she maintained accountability and control in safeguarding documents. She properly handled and inventoried millions of dollars of equipment without error. Occasionally, witness 1 socialized with Applicant and found her to be responsible. (Tr. 32-41)

Witness 2 has known Applicant on a professional basis since 2010. She is a supervisor at AGA. She was a coworker and became Applicant's supervisor from 2011 to 2012. Witness 2 did not have an opportunity to evaluate Applicant because one had just been conducted by her predecessor. As a program analyst, Applicant collected and evaluated information for reports and maintained accountability over all project assets, including servers, and other equipment with a value over 20 million dollars. Applicant always maintained 100% accountability over the equipment. After the team encountered budget cuts, Applicant's value to the team increased based on her assignment and completion of other projects outside her area of responsibility. Witness 1 does not believe young job applicants receive the guidance they need to accurately fill out the application forms ahead of the polygraph. The lack of guidance generally causes them to fail the polygraph. (Tr. 13, 42-53)

Witness 3's daughters were in high school when she met Applicant in 1995. Witness 3 would trust Applicant with her bank account. A testament to Applicant's honesty and reliability is that she is godmother to two of witness 3's daughters. (Tr. 54-61)

Applicant submitted two character statements. Reference A provided two statements. Applicant worked on Reference A's team at AGA from 2010 through 2011. She was trustworthy with classified materials and equipment. She was also a responsible team player. (AE A, AE E) Reference B, chief operating officer at AGA, indicated that Applicant handled a high volume of classified documents. Reference B was impressed with Applicant's overall attitude and compliance with regulations. (AE B)

Applicant's performance evaluation for the period of June 2012 to March 2013 was commendable. The appraiser noted in March 2013, that Applicant's enrollment in graduate-level project management courses. (AE C) Applicant's performance evaluation for January to December 2011, exceeded standards. The appraiser complimented Applicant on her team player attitude. (AE D) In November 2009, Applicant received a certificate for completing a five-day intelligence course. (AE F)

On January 31, 2011, a civil action involving the April 2009 traffic offense was dismissed. (AE Q) On April 22, 2013, Applicant filed a petition for expungement of the April 2009 charges. (AE R) On December 26, 2012, Applicant's insurance company advised her by letter that damage to the state government vehicle had been paid. (AE S)

Credibility Finding

Having weighed and balanced all the evidence, including Applicant's demeanor and conduct at the hearing, I find that her repeated claims of candor throughout the security investigation are undermined by the false and contradictory information she provided during the security investigation. Her inconsistent testimony imposes a negative impact on her credibility.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the potentially disqualifying and mitigating conditions of the AG. These conditions should be evaluated in the context of nine general factors known as the whole-person concept to bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision regarding security clearance eligibility. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.1.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15., the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion of establishing that it is clearly consistent with the national interest to grant him a security clearance.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The applicable disqualifying conditions under AG ¶ 19 are:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

The Government has the responsibility of presenting sufficient information to support all allegations under the financial considerations guideline. The Government case is established by the credit report, Applicant's interview summaries, and the record transcript. Applicant's financial difficulties began in May 2008 when she took out a debt consolidation loan. She was unable to make the first payment. She could not maintain the revised repayment plan. After she defaulted on the revised repayment plan, the account was charged off in July 2009. In November 2010, Applicant exercised poor judgment by allowing her friend take her car and car payments. AG ¶¶ 19(a) and 19(c) are applicable.

Five mitigating conditions under AG ¶ 20 are potentially pertinent:

- (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 reliability, trustworthiness, and good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's delinquent debt to the credit union has been in a charge-off status since July 2009. Though she has taken corrective action to resolve or bring the other debts to a current status, she still owes at least \$12,000 to the credit union. AG ¶ 20(a) does not apply.

While Applicant was making sporadic payments to the credit union, she incurred unemployment from September to November 2008. In October 2009, she developed a serious illness. In October 2010, she underwent surgery and was on pregnancy leave for an unknown period in 2012. Because of Applicant's success in eliminating the delinquent status of two of the three debts, while making sporadic payments on the charged-off credit union debt, she is entitled to some mitigation under AG ¶¶ 20(b) and 20(d) for acting responsibly and demonstrating a good-faith effort to repay overdue creditors.

Applicant provided documentation showing that she contacted a credit counseling service in January 2012. Even though there is no evidence to demonstrate she enrolled in the debt plan, she receives some mitigation for discussing her financial problems with counseling service officials and at least establishing a plan for recovery. On the other hand, Applicant's prior affiliation with the counseling service between 2005 and 2008 is unsupported by any independent evidence. She receives limited mitigation under AG ¶ 20(c) for taking responsible action in July 2009 by reviewing her credit report to determine the charged off status of the credit union debt. She also exercised good judgment by resuming the car payments to return the installment loan to a current status. Overall, Applicant is entitled to limited mitigation under AG ¶ 20(e) based on her review of credit reports to determine that SOR 1.d was a duplicate entry of SOR 1.b.

Personal Conduct

The security concern for personal conduct is set forth 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.

AG ¶ 16 contains two disqualifying conditions that are potentially pertinent:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personnel security statement, or similar form to conduct investigations, determine employment qualifications, award benefits and 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.

Security concerns are immediately raised by an omission of information from a Government security questionnaire or an interview. However, not every omission under the personal conduct guideline should be construed as a falsification. Omissions can result from haste, oversight, or misinterpretation of the questions in the security form or in the interview. To fall within the scope of AG ¶¶ 16(a) and 16(b), the omission must be a deliberate concealment or falsification of relevant facts used to determine whether a security clearance should be granted or denied. An applicant's drug and criminal record are relevant if the information could affect an agency decision regarding an applicant's security suitability. Applicant was cognizant of her drug use, but deliberately omitted the information in the three employment and security clearance applications in 2002, 2003 and 2005. She deliberately omitted the April 2009 criminal charges in the e-QIP in January 2011 and the interview in March 2011. AG ¶¶ 16(a) and 16(b) apply.

There are four mitigating conditions under AG ¶ 17 that are potentially pertinent to the circumstances in this case. Those conditions are:

- (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 admission 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 was 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; and
- d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur.

The record discloses no evidence demonstrating that Applicant came forward to correct the omissions of her drug history or her criminal record. She claimed she disclosed her marijuana use in September 2003 as a part of the process to obtain employment and not because of the threat of taking the polygraph. Her claim is not credible. Even after she revealed her drug use in September 2003, she deliberately concealed the information again on her security form in September 2005. Applicant never took action to correct her

omissions of her criminal/traffic record until she was confronted with the April 2009 charges in June 2011. AG ¶ 17(a) does not apply.

Applicant's claim of misunderstanding the section 22 question regarding her criminal/traffic record in her January 2011 e-QIP and March 2011 interview is not credible. The first important statement in the explanatory section of the e-QIP question is that information should be reported regardless of whether the charge was dismissed. The second statement defines the time frame in which the information is to be disclosed. The third statement is that an applicant can exclude certain offenses that do not involve alcohol or drugs. Applicant is an educated person who knew she had been charged with alcohol-related offense less than two years before she completed the e-QIP and when she was interviewed in March 2011.

Neither AG ¶¶ 17(b), 17(c), nor 17(d) apply to Applicant's deliberate omissions of her illegal drug use from the application forms or the January 2011 e-QIP and the March 2011 interview. Applicant exercised some good judgment by consulting her FSO after she was informed she had to return for a second OPM interview in June 2011. The FSO told her to be honest. When she was confronted with the April 2009 incident, she disclosed she had been cited for suspicion of driving while under the influence of alcohol. However, she did not reveal the other three charges. The pattern of deliberate omissions was serious and continues to cast doubt on Applicant's judgment.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the personal conduct guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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 a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is 30 years old. She is single with one child. She anticipates marriage in the near future. The three character witnesses consider her to be a very professional, trustworthy person. Witness 3 would trust her with her bank account. The two character references extol Applicant's trustworthiness and compliance with regulations. Her performance evaluations show she is a productive employee.

The foregoing mitigating evidence cannot be viewed by itself. Rather, under the Directive, it must be evaluated with all available information whether it is favorable or unfavorable. In May 2002, Applicant deliberately provided false information about her illegal drug use. She used some good judgment in divulging the drug use in September 2003 even though I conclude that a forthcoming polygraph was a motive for her revelations. I have considered Applicant's youthful age when she deliberately falsified the 2002 security form. By September 2005 however, she had held a security clearance for three years and should have been more familiar with the security clearance process. She knew or should have known her drug use was an issue, and within seven years of the September 2005 security form. Unfortunately, she decided to conceal rather than disclose the use.

Applicant exercised additional poor judgment in January and March 2011 by not disclosing the April 2009 citations. After being advised by her FSO to be truthful in the approaching June interview, she continued her display of poor judgment by not providing a full account of the charges connected with the April 2009 incident. The fact that the charges were dismissed, that Applicant's insurance settled the civil judgment for the April 2009 incident, and that she has a pending action of expungement to remove the April 2009 incident from her record, does not eliminate her deliberate omissions of her January 2011 e-QIP and March 2011 interview. Considering the evidence as a whole, Applicant prevails under the financial guideline. Conversely, she has failed to mitigate the security concerns under the personal conduct guideline.

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:

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| Paragraph 1 (Guideline F): | FOR APPLICANT |
| Subparagraphs 1.a-1.d: | For Applicant |
| Paragraph 2 (Guideline E): | AGAINST APPLICANT |
| Subparagraphs 2.a-2.e: | Against 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.

Paul J. Mason
Administrative Judge