



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 12-03576
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie Mendez, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

11/15/2013

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns under Guidelines E (Personal Conduct), K (Handling Protected Information), and F (Financial Considerations). Applicant refuted the Guideline K allegations, but she did not mitigate the concerns under Guidelines E and F. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on March 25, 2011. On January 14, 2013, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines E, K, and F. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant answered the SOR on February 16, 2013; denied all the allegations; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 20, 2013, and the case was assigned to me on March 27,

2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 10, 2013, scheduling the hearing for April 30, 2013. On April 29, 2013, Applicant's counsel requested that the hearing be postponed, because Applicant had been hospitalized for the premature birth of twins. Her counsel later advised that the birth did not occur, but that she expected to be hospitalized on June 20, 2013, when birth would be induced.

On June 21, 2013, I issued a scheduling order, ordering the parties to be prepared to conduct the hearing not later than August 15, 2013. On August 6, 2013, Applicant's counsel requested a postponement based on complications during childbirth and the recommendation of her physician that she not return to work until September 25, 2013. Her counsel requested a postponement until that date, and I granted the request.

On August 28, 2013, DOHA issued a second notice of hearing, scheduling the hearing for September 26, 2013. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified, presented the testimony of four witnesses, and submitted Applicant's Exhibits (AX) A through W,¹ which were admitted without objection. I kept the record open until October 4, 2013, to enable Applicant to submit additional documentary evidence. She submitted AX X on October 11, 2013. Department Counsel did not object to the untimely submission, and it was admitted. Department Counsel's comments about AX X are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on October 3, 2013.

Findings of Fact

Applicant is a 31-year-old computer security systems analyst employed by a defense contractor since January 2010. She worked for the same employer as a software engineer from June 2004 until she began her current job. She has held clearances from several federal agencies since June 2004.

Applicant married in September 2005. She has four children, including twins who are about five months old. (Tr. 69.) Her husband also is employed by a federal contractor and holds a security clearance. (Tr. 70.)

Applicant received a bachelor's degree in computer science in May 2004 and a master's degree in information technology in May 2011. (AX P, Q, R.) She completed her employer's leadership development program in June 2010. (GX 5 at 136-37²; AX O.)

¹ AX A through W were attached to Applicant's answer to the SOR. At Applicant's request, they were treated as though they were submitted at the hearing and lettered accordingly.

² The numbering of GX 5 begins at page 132.

In March 2010, Applicant sought eligibility for access to sensitive compartmented information (SCI), and she completed a polygraph examination in January 2011. In March 2011, her application was denied by another government agency (AGA). The denial was based on a "written crimes report referral" (hereafter referred to as the "crime report") submitted by the polygraph examiner, which recited the following:

During routine processing, Subject stated that she falsified her tax returns for 2007, 2008, and 2009. According to Subject, when she initially completed her 2007 taxes, she was going to owe \$4,000.00 to the IRS. Subject said to prevent owing so much, she claimed \$5,000.00 to \$10,000.00 in false expenses, \$2,000.00 in tithes when she only paid \$200.00, and \$500.00 in charitable contributions, Subject also did not report two months of rental income she collected, which totaled \$3,100.00. Subject said her husband worked part time and earned approximately \$4,000 to \$5,000 which they did not claim as income. After the adjustments, Subject said she owed \$200.00 to \$300.00, instead of \$4,000.00.

Subject said for the 2008 and 2009 tax returns she made the same claims for tithes or charitable contributions, made more claims for mileage on their rental property, and did not report her husband's income. For the 2009 tax return, Subject stated she also increased her expenses for her rental property renovations by \$1,000.00, which was false.

Subject reported while obtaining her current mortgage, she engaged in falsification of documents. Subject said that, when she was applying for her mortgage, she did not have a tenant in her rental property and needed to show that she did in order to qualify. Subject and her husband had a check made out to them from her brother-in-law in order to pretend he was the tenant and was paying for rent. Subject confirmed that the brother-in-law was in fact not a tenant and knowingly provided the false information to get their mortgage.

In addition, Subject stated she committed continuous time and attendance fraud from 2008 to the present. According to Subject[,] between 2006 and 2008, when she worked in the [employer's] office in [location], each week she would leave work 2 hours [early]. Subject said when she worked at the company's [location] for 6 months in 2008 and again from October 2009 until January 2010, she left 2 hours early on a daily basis. Since January 2010, Subject worked at [location] and said she leaves work 2 hours early approximately 4 out of 5 days per week. She said the rule at [place of employment] is to bill for the hours worked; however she admitted to billing for hours she did not work. Subject stated between June and October 2010, she worked from home and billed full-time hours that she did not work. Subject said she called in sick approximately 2 times per month when she was not sick. Subject said if she is sick she will stretch

out her time off even when she feels better. Subject said she knows what she is doing and that it is deliberate and wrong.

(GX 2 at 3-4.)

The AGA decision letter also recited additional conduct that was not included in the crime report. It stated that Applicant admitted downloading thousands of songs, movies, and software applications between 2000 and 2010, without paying for them. It also stated that Applicant admitted that during her undergraduate and graduate studies, she cheated on tests, stole classmates' work and submitted it as her own, and plagiarized papers. Finally, the decision letter stated that she admitted taking classified material home on 15 to 20 occasions from 2004 to 2006 and discussing classified information with her husband on a regular basis. The record does not reflect the source or supporting evidence for these statements in the decision letter.

Applicant did not appeal the AGA's denial of her application. In an affidavit executed on May 11, 2011, she stated that she did not appeal because she already had a secret clearance, which was sufficient for her current position. (GX 3.) In April 2011, her clearance was suspended because of the AGA's adverse determination. (GX 4.) Seeking to retain her clearance, she submitted her most recent security clearance application.

At the hearing, Applicant disputed the accuracy of the polygraph examiner's report and denied the conduct set out in the AGA decision letter. In a personal subject interview and during her hearing testimony, Applicant stated that the polygraph examiner had to adjust the electrodes on her abdomen several times because she was pregnant and the electrodes were picking up the sounds of the unborn baby's heartbeat. (GX 5 at 139; Tr. 71-73.) She testified that both she and the examiner became irritable during the examination. The examiner was irritated and concerned about the accuracy of the polygraph results, and Applicant was irritated because the examination lasted five hours and the examiner refused to allow any breaks in the examination. Applicant testified that she felt like she was "backed into a corner." (Tr. 71-74.) She testified that the polygraph examiner told her she intended to "bring her back because [she] was doing well." Applicant testified that she repeatedly asked for another polygraph examination, without success. (Tr. 86-87.)

The evidence concerning the allegations in the SOR is summarized below. All the allegations were based on the crime report and the AGA decision letter.

SOR ¶ 1.a (from June 2004 to January 2011, left work two hours early from one to five days per week and billed for hours not worked). Applicant denied this allegation. She testified that her employer never took any action against her for misreporting time worked or time-card fraud. (Tr. 75.) Applicant's supervisor from 2009 to 2011 testified that she worked eight to ten hours a day in the office and she was authorized to work at home on a scheduled basis. He testified that her duty performance was outstanding, and there were no issues regarding time-card fraud or

misrepresentation of the hours worked. (Tr. 62-64.) Another supervisor testified that, when Applicant and her colleagues were working remotely, they were testing software, handling large volumes of data, and visible to their supervisor, who could see their computer screens and would detect any periods of inactivity. If she had been offline during working hours, he would have noticed it “in a split minute.” (Tr. 53-56.) He testified that Applicant was the top performer under his supervision and an “up and coming star” in the company’s leadership program. (Tr. 38-39.) This supervisor submitted a statement (AX N) which included the following comments:

My professional opinion of [Applicant] is that she has the highest personal integrity and professional stamina of any person I’ve ever had the honor and pleasure of working with . . . Her behavior, integrity, honesty and professional standards are above reproach. She is honest, direct, and unblemished in her personal integrity. . . . [Applicant] was selected for [her employer’s] Leadership Program that nurtures promising leaders for the Company’s most prestigious leadership positions. She excelled in every aspect of the leadership program and the task she managed concurrently for [her employer]. . . . I believe that [Applicant] is one of the most honest and sincere professionals that I’ve ever met in the 33 years that I’ve worked for the Federal Government as a military officer and defense contractor.

SOR ¶ 1.b, cross-alleged in SOR ¶ 3.a (deliberately provided false information on tax returns for 2007, 2008, and 2009 by claiming false expenses, false tithes, and false charitable contributions; failing to report rental income; and failing to report spouse’s income). Applicant denied this allegation and submitted copies of her tax returns for 2007, 2008, and 2009. She did not submit any supporting documentation for the information reported on the tax returns.

Applicant’s 2007 return, filed jointly with her husband, reflects wages and salaries of \$118,368; a net loss of \$6,495 on a dog-breeding business, charitable contributions of \$7,000, and a federal tax refund of \$116. Their return did not include a Schedule E, Supplemental Income and Loss reflecting rental income. (AX E.) Applicant and her spouse had rental income of \$1,650 per month beginning in August 2007, which apparently was not reported. The 2007 tax return was prepared by a tax accountant, based on documents presented by Applicant and her husband. (AX C.)

Applicant’s current salary is \$89,000 and her husband’s is \$85,000 (Tr. 84.) If her 2007 salary was the same as or less than her current salary, her husband’s salary income in 2007 would have been about \$29,000, more than the \$4,000 to \$5,000 set out in the crime report. Without supporting documentation, it is impossible to determine the accuracy of the \$118,368 that was reported. However, the federal tax refund of \$116 is inconsistent with the polygraph examiner’s report, which states that Applicant told her that, after recalculating her return, she owed \$200 to \$300.

Applicant's 2008 federal income tax return reflected total wages and salaries of \$125,036, a net loss of \$11,220 on a rental property, \$643 in charitable contributions, and a refund of \$9,280. This return was self-prepared, using TurboTax software. (AX F.) The \$643 in charitable contributions is inconsistent with the crime report, which states that Applicant admitted claiming the same amounts in 2008 that she claimed in 2007.

Applicant's 2009 return reflected total wages and salaries of \$146,636, a net loss of \$9,715 on a rental property (which was entered on the tax return as zero), charitable contributions of \$260, and a refund of \$8,086. Although Applicant and her spouse evicted their tenants in May 2009 and incurred repair expenses to their rental property, the Schedule E pertaining to this property lists repair costs of only \$864. This return was self-prepared, using TurboTax software. (AX G.) The reported charitable contributions of \$260 are inconsistent with the crime report, which states that she admitted claiming the same amounts in 2009 that she claimed in 2007. The deduction for \$864 in repair expenses also is inconsistent with the crime report, which states that Applicant admitting increasing the cost of rental property renovations by \$1,000.

SOR ¶ 1.c, cross-alleged in SOR ¶ 3.b (provided false information to mortgage lender for primary residence by obtaining a check from brother-in-law to show that he was a tenant in her rental property). Applicant denied this allegation. Her credit report reflects that the mortgage loan on her primary residence was opened in October 2007, and the payments are current. (AX W at 4-5.) Applicant's brother-in-law testified that he intended to rent her rental property. In April 2007, he gave Applicant a \$1,500 check as a security deposit. In the summer of 2007, he decided not to rent the property, because he could not afford to move. (Tr. 23-26; AX K.) In August 2007, Applicant and her husband rented the property to other tenants. (AX C.)

SOR ¶ 1.d (provided false information about qualifications on job applications). Applicant denied this allegation and testified that the polygraph examiner accused her of not having the college degrees that she listed on her application. This allegation was not included in the crime report, but it was included in the AGA decision letter. The evidentiary basis for it is not reflected in the record. Applicant presented copies of the college degrees reflected on her current resume. (AX P; AX Q; AX R.)

SOR ¶ 1.e (provided false information on job applications about illegal drug use). This allegation was not included in the crime report, but it was included in the AGA decision letter. Applicant testified that the polygraph examiner asked her if she had ever lied about drug use, and she responded that she had not used illegal drugs during the time period specified on the Standard Form 85 or Standard Form 86 that she previously submitted. There is no other evidence in the record reflecting drug involvement by Applicant.

SOR ¶ 1.f (from 2000 to January 2011, stole classmates' work and submitted it as her own, cheated on tests, and plagiarized papers). Applicant testified that in 2000-2001, while she was an undergraduate freshman, she received help from a classmate on a project. Her professor discovered it, reprimanded her,

required her to redo the project, and gave her a “B.” She was not otherwise disciplined by the university. Applicant denied cheating on tests, copying classmates’ work, or plagiarizing papers. (Tr. 85-86.)

A professor who teaches information technology at the graduate school at the institution where Applicant obtained her master’s degree testified about the likelihood of Applicant successfully engaging in plagiarism. He has 20 years of experience with a computer program that measures the degree of potential plagiarism. The program detects similarity of word sequences, usually based on about four words. He described the program as a “very powerful automated tool” for detecting attempted plagiarism. He testified that the absence of any action taken against Applicant for plagiarism in graduate school means, “She didn’t do it.” (Tr. 40-42.)

SOR ¶ 1.g (from 2004 through 2006, brought home a classified document without authorization). This allegation was not included in the crime report, but it was included in the AGA decision letter. The evidentiary basis for it is not reflected in the record. Applicant denied ever bringing classified documents home without authorization. (Tr. 81.)

SOR ¶ 1.h, cross-alleged in SOR ¶ 2.a (discussed classified information with husband on a regular basis). Applicant denied this allegation. It is not included in the crime report, but it is included in the AGA decision letter. The factual basis for it is not reflected in the record. Applicant testified that both she and her husband had clearances, but they have a standing rule that they will only talk about their jobs in general terms and will never talk about classified information. (Tr. 82.)

Applicant and her husband experienced financial problems in 2009, because their tenants in the rental property stopped paying rent, were evicted, and seriously damaged the property. Applicant and her husband disposed of the rental property in a short sale, and the unpaid balances on the first and second mortgages were forgiven. The mortgage on their residence is current, and they are living within their means. (AX A, B, W, X.)

A government lawyer employed by another government agency, who is an officer in the Army Reserve and holds a security clearance, testified that he has known Applicant for 14 years and has contact with her at least once a month. Based on what he knows about Applicant, he believes the allegations in the SOR are unfounded. (Tr. 29-32.)

A coworker who has known Applicant since college described her as “reliable, dedicated, honest and eternally upbeat.” She stated that Applicant has “unparalleled” ability to work with a team, multitasks effectively, and is able to handle a high-volume workload. (AX H.)

A coworker who has known Applicant since 2011 states that “her talent, honesty, dedication, and teaming abilities are unsurpassed.” (AX I.) Another coworker who has

known Applicant since June 2011 stated that she “is driven like a tiger to do her best with a tireless attention to the important details.” He considers her to be a person of high moral character, “straightforward and honest, with no hidden agenda.” (AX L.)

A former supervisor, who has known Applicant since 2008, stated that Applicant “possess a very high sense of personal character, integrity, loyalty and professionalism.” He stated that she “is very honest and holds herself to a very high work ethic.” (AX M.) Another former supervisor who has known Applicant since 2010 described her as “a reliable, dedicated, and honest employee that gave 110% for every activity she was responsible for.” (AX J.)

Applicant’s performance evaluations for January to June 2008 and January to December 2009 rated her as a “successful contributor,” the middle category. (AX U; AX V.) Her evaluation for January to December 2010 rated her as an “exceptional contributor,” the highest rating. (AX T.) Her evaluation for January through December 2011 rated her as a “high contributor,” the next highest rating. (AX S.)

Policies

“[N]o 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 applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec.

Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[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

Guideline E, Personal Conduct

The SOR alleges that Applicant left work two hours early one to five days week from about June 2004 to at least January 2011 and billed for the hours she did not work (SOR ¶ 1.a); provided false information on her 2007, 2008, and 2009 federal income tax returns (¶ 1.b); knowingly provided false information to a mortgage lender by representing that she had a tenant in her rental property (SOR ¶ 1.c); provided false information on job applications about her qualifications (SOR ¶ 1.d); provided false information on job applications about her illegal drug use (SOR ¶ 1.e); stole classmates’ work, cheated on tests, and plagiarized papers during her undergraduate and graduate education (SOR ¶ 1.f); brought home a classified document without authorization from 2004 through 2006 (SOR ¶ 1.g); and discussed classified information with her husband on a regular basis (SOR ¶ 1.h).

The concern under this guideline is set out in AG ¶ 15 as follows:

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.

SOR ¶¶ 1.d and 1.e are vague. They do not allege a time frame for the conduct alleged, nor do they identify the documents or the employers involved. Similarly, SOR ¶ 1.g alleges a two-year time frame and single classified document, not otherwise described. The allegations appear to fall short of the requirement of the Directive ¶ E3.1.4 that the SOR “shall be as detailed and comprehensive as the national security permits.” However, Applicant was represented by an attorney who has extensive experience with ISCR cases, and he did not object to the lack of specificity in the SOR.

The evidence on which the allegations are based consisted of the AGA decision letter and the AGA crime report. The source of the evidence appears to be the polygraph examiner, but it is not clear whether the crime report was authored by the polygraph examiner or someone else. Based on Applicant’s testimony, it appears that some of the allegations that were in the decision letter but not included in the crime report also were based on information from the polygraph examiner. There is no evidence that Applicant had an opportunity to review the accuracy of the information provided by the polygraph examiner. In short, the reliability of the evidence is diminished by the multiple levels of hearsay involved. On the other hand, Applicant chose not to appeal the AGA’s unfavorable decision, even though it was likely to hamper her career progression, which had been very promising up to that point.

If the polygraph examiner was the source of the information in the SOR, Applicant may have been entitled under Directive ¶ E3.1.22 to cross-examine her. Applicant’s attorney did not object to the admission of the AGA decision letter or the crime report, nor did he request that the declarant be subjected to cross-examination.

The Appeal Board has held that the summary of an applicant’s answers to a polygraph examiner’s questions is admissible as an official record under Directive ¶ E3.1.20 and it is entitled to a presumption of good faith and regularity. ISCR Case No. 10-08390 (App. Bd. Mar. 30, 2012). See also ISCR Case No. 10-04325 (App. Bd. Aug. 15, 2013). Applicant’s testimony that the polygraph examiner was irritated when the unborn baby’s heartbeat interfered with the polygraph apparatus is insufficient to overcome this presumption. However, the presumption of good faith and regularity does not include a presumption of infallibility. Thus, I have considered whether Applicant may have unintentionally given the polygraph examiner incorrect information, whether Applicant’s responses during the polygraph examination may have been unintentionally misinterpreted by the polygraph examiner, and whether the polygraph examiner’s report may have been inaccurately transcribed in the crime report and the AGA decision letter. Based on the level of detail, the specificity, the number of events set out in the crime report and the decision letter, and Applicant’s decision not to appeal the unfavorable AGA decision, I am satisfied the crime report and the AGA decision letter are not based on intentional fabrications, but some details may be inaccurate.

SOR ¶¶ 1.a-1.e allege falsifications of various documents. When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission or misstatement, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission or misstatement. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's level of education and business experience are relevant to determining whether an omission or misstatement was deliberate. See ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

The quantum of evidence required to raise a security concern is relatively low. As noted above, the Government is required to establish potentially disqualifying conditions by substantial evidence, which is "more than a scintilla but less than a preponderance." Based on the evidence of record and the foregoing considerations, I find that SOR ¶¶ 1.a, 1.b, and 1.f are partially established; and SOR ¶¶ 1.c, 1.d, 1.e, 1.g, and 1.h are not established, for the reasons set out below:

SOR ¶ 1.a (time-card fraud). The crime report is detailed and extensive regarding Applicant's admissions of time-card fraud. In light of her employer's liberal teleworking policy and her reputation for hard work and dedication, it is likely that she sometimes left the office early but continued working at home. However, her specific admission that she billed for hours not worked is not explained or refuted, and it would not have been detected by the time-card procedures utilized by her employer. Thus, I conclude that the part of SOR ¶ 1.a alleging that she billed for hours not worked is established.

SOR ¶¶ 1.b and 3.a (false tax returns). The crime report is very detailed regarding Applicant's admission that she falsified her 2007 tax return, but the crime report provided less detail for 2008 and 2009. Her 2007 tax return reflects that no rental income was reported, and it reflects \$7,000 in charitable contributions during a year when she and her husband were having difficulty finding a tenant for their rental property. The claim of \$7,000 in charitable contributions is suspicious, considering that she and her husband claimed only \$643 in 2008 and \$260 in 2009. The statement in the crime report that Applicant owed \$200 to \$300 for 2007 is contradicted by the income tax return, which reflected a refund.

The tax returns for 2008 and 2009 reflect nothing unusual on their face, even though Applicant submitted none of the supporting documentation for those returns. The tax returns for 2008 and 2009 refute the statements in the crime report that Applicant admitted overstating her charitable contributions and her rental expenses in her 2008 and 2009 tax returns. I conclude that the crime report is not refuted regarding Applicant's admissions of failing to report rental income and overstating her charitable contributions in tax year 2007, but it is refuted regarding Applicant's admissions of falsifying her charitable contributions and repair expenses on the rental property in her 2008 and 2009 returns. I conclude that SOR ¶ 1.b is established for the 2007 tax return but not for the 2008 and 2009 returns.

SOR ¶¶ 1.c and 3.b (mortgage fraud). Applicant's credit report indicates that the mortgage on her primary residence was finalized in October 2007 and would likely have been pending in the June-August 2007 timeframe. The evidence suggests that Applicant did not notify the mortgage company that her brother-in-law had decided not to rent their rental property or that she found another tenant shortly after her brother-in-law decided not to rent it. Her conduct was negligent, but the evidence does not show intentional misrepresentation. I conclude that SOR ¶ 1.c is not established.

SOR ¶ 1.d (false credentials on job applications). Applicant has worked for her current employer since her graduation from college in 2004. She presented documentary evidence of her college degrees. Department Counsel produced no evidence of her job applications and did not challenge any of the information on Applicant's current resume. The SOR does not allege, nor does the evidence show which job applications were falsified, if any, when they were falsified, or what information was falsified. The evidence is insufficient to show any specific conduct that was sufficiently serious, recent, or frequent to raise security concerns. This allegation is not established.

SOR ¶ 1.e (concealment of drug use on job applications). Applicant denied this allegation. By telling the polygraph examiner that she had not concealed any drug use within the reporting period specified on the SF 85 or SF 86, she apparently led the examiner to conclude that Applicant had used drugs at some time in her life outside that period and had not reported it on unspecified job applications. The SOR does not allege, nor does the evidence show when the drug use occurred or which job applications were falsified, if any. The evidence is insufficient to show any specific conduct that was sufficiently serious, recent, or frequent to raise security concerns. This allegation is not established.

SOR ¶ 1.f (cheating and plagiarism as a student). This allegation was not included in the crime report. It is established for the single incident admitted by Applicant at the hearing, but not for the eleven years of cheating and plagiarizing alleged.

SOR ¶¶ 1.g and 1.h (security violations). These allegations were not included in the crime report, and the record does not reflect the basis for including these allegations in the decision letter. Applicant credibly denied them. These are not established.

The evidence supporting the allegations in SOR ¶ 1.a establishes the disqualifying condition in AG ¶ 16(b) ("deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative"). The evidence supporting SOR ¶¶ 1.a, 1.b, and 1.f establishes the following disqualifying conditions:

AG ¶ 16(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;

AG ¶ 16(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 . . . a pattern of dishonesty or rule violations; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

The following mitigating conditions are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(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;

AG ¶ 17(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; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(a) is not established. Applicant did not admit the falsifications and omissions alleged in SOR ¶¶ 1.a and 1.b until she was interviewed by the polygraph

examiner. The record does not reflect whether she admitted SOR ¶ 1.f at any time before the AGA decision letter.

AG ¶ 17(c) is established for SOR ¶ 1.f, for which only a single, 13-year-old incident was proven. It is not established for the time-card fraud alleged in SOR ¶ 1.a, because the conduct was recent and frequent. It is not established for SOR ¶ 1.b, even though it occurred when the 2007 tax return was filed in February 2008, more than six years ago. The tax fraud in SOR ¶ 1.b occurred at the same time that Applicant was involved in time-card fraud alleged in SOR ¶ 1.a, which continued until January 2011. Thus, I conclude that SOR ¶ 1.b is not mitigated by the passage of time, because Applicant's conduct since filing her 2007 tax return does not demonstrate "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." See ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). The falsifications alleged in SOR ¶¶ 1.a and 1.b were not minor and involved multiple transactions. They did not occur under unique circumstances making them unlikely to recur, and they cast doubt on her current reliability, trustworthiness and good judgment. I conclude that AG ¶ 17(c) is not established for SOR ¶¶ 1.a and 1.b.

AG ¶ 17(d) is partially established for SOR ¶ 1.f but not for SOR ¶¶ 1.a and 1.b. Applicant acknowledged that she received unauthorized help on a college project in 2000, but she has not acknowledged any of the other behavior alleged. She presented no evidence of counseling or other steps to make recurrence of the conduct unlikely.

AG ¶ 17(e) is partially established, because Applicant admitted her behavior to the polygraph examiner. However, she recanted many of her admissions at the hearing.

Guideline K, Handling Protected Information

The SOR cross-alleges SOR ¶ 1.h under this guideline. The security concern under this guideline is set out in AG ¶ 33: "Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern." Based on my conclusion that SOR ¶ 1.h was not established by substantial evidence, no disqualifying conditions under this guideline are applicable.

Guideline F, Financial Considerations

The SOR cross-alleges SOR ¶¶ 1.b and 1.c under this guideline. The concern under this guideline is set out in AG ¶ 18:

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

overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The evidence supporting SOR ¶ 1.b establishes the following disqualifying conditions under this guideline:

AG ¶ 19(d): deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust; and

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

The mitigating condition in AG ¶ 20(a) is potentially relevant: "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." However, for the reasons set out in the above discussion of AG ¶ 17(c), I conclude that this mitigating condition is not established.

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I have incorporated my comments under Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a mature, well-educated employee who has earned the respect of many supervisors and coworkers. It is difficult to understand why a person of such talent and potential would risk her reputation and career for minimal gain. After weighing the disqualifying and mitigating conditions under Guidelines E and F, evaluating all the evidence in the context of the whole person, and mindful of my obligation to resolve close cases in favor of national security, I conclude Applicant has not mitigated the security concerns based on her personal and financial conduct. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.h:	For Applicant
Paragraph 2, Guideline K:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge