DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---	)	ISCR Case No. 15-01972
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: Eric F. Adams, Esquire

08/09/2017

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On August 5, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.[1] On September 17, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006.[2] The SOR

[1] GE 1 (e-QIP, dated August 5, 2014).

alleged security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on September 29, 2015. On October 1, 2015, she responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on June 1, 2016. The case was assigned to me on August 4, 2016. A Notice of Hearing was issued on August 31, 2016. I convened the hearing as scheduled on September 22, 2016.

During the hearing, six Government exhibits (GE) 1 through GE 6, one Administrative exhibit, and eight Applicant exhibits (AE) A through AE H were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on September 30, 2016. I kept the record open to enable Applicant to supplement it. She took advantage of that opportunity and timely submitted two documents, which were marked and admitted as AE I and AE J, without objection. The record closed on October 20, 2016.

Findings of Fact

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

Applicant is a 44-year-old employee of a defense contractor. She has been a technical industrial specialist with her employer since August 2014. She was previously a senior warehouse technician with two other companies, a sitter for an elderly individual, and a warehouse technician. She is a May 1991 high school graduate with some college credits, but no degree. She has never served with the U.S. military. She has never held a security clearance. Applicant was married in March 2014. She has four sons (born in 1989, 1992, 1993, and 1998).

[2] Effective June 8, 2017, by Directive 4 of the Security Executive Agent (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, were established to supersede all previously issued national security adjudicative criteria or guidelines. Accordingly, those guidelines previously implemented on September 1, 2006, under which this security clearance review case was initiated, no longer apply. In comparing the two versions, there is no substantial difference that might have a negative effect on Applicant in this case.

Financial Considerations[3]

It is unclear when Applicant's finances became a problem for her, although she noted in her e-QIP that a $7,000 student loan became delinquent in February 2005 because she "[did not] have enough money coming in . . . to pay it."[4] Applicant stated that she "had a bad stretch of truly bad luck from 2006 till about 2013."[5] She encountered two periods of unemployment due to being laid off, but the periods in question are unclear because Applicant's e-QIP dates differ from the dates she stated during her interview with the investigator from the U.S. Office of Personnel Management (OPM) as well as the dates she testified to during her hearing. It appears that she was unemployed from June 2007 until January or February 2008, and again from June 2008 until March 2010.

In May 2006, Applicant filed for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code, listing 52 bills. The summary of claims reflected the total amount allowed as $18,455.86, and the total principal and interest paid as $1,403.61. On December 3, 2007, the Chapter 13 petition for bankruptcy was dismissed because Applicant had failed to continue making the proposed plan payments, without offering any explanations or justifications.[6] Applicant eventually explained during her OPM interview that her payments stopped when she lost her job. During Applicant's most recent period of unemployment, she was supported by her boyfriend and unemployment compensation, and essentially spent her time watching television.[7] She made no mention of searching for another job. Accounts became delinquent and placed for collection or charged off, and at least two judgments were filed against her. Applicant claimed she was living paycheck to paycheck, and she attributed losing her job and the medical bills for her children as the sole factors leading to her financial difficulties.

In November 2008, Applicant was arrested for issuing eight worthless checks.[8] Applicant told the OPM investigator that there were four checks, with three of the four given to a local pizza shop, but there were actually eight worthless checks, with five given to the pizza shop, two given to a grocery store, and one to an automobile salvage company for her damaged vehicle. She acknowledged that there was no money in her account at the time she wrote the checks, but anticipated her unemployment benefit would be deposited into the account, and believed the bank would cover her overdraft fees.[9] She indicated to the OPM investigator that she went to court in November 2009

[3] General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE, *supra* note 1; GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 29, 2014; GE 4 (Equifax Credit Report, dated August 19, 2015); GE 2 (Personal Subject Interview, dated October 14, 2014).

[4] GE 1, *supra* note 1, at 34.

[5] Tr. at 38.

[6] GE 5 (Bankruptcy File, various dates). *See also* AE J (List of Bankruptcy Payments, undated).

[7] GE 2, *supra* note 3, at 3.

[8] GE 6 (Criminal History Record, dated September 3, 2014).

[9] GE 2, *supra* note 3, at 3; Tr. at 46.

and was placed on probation for six months, and she was ordered to pay restitution of $3,000 at a rate of $100 per month.[10] Court records tell a slightly different story. In December 2009, Applicant was adjudged guilty of issuing eight worthless checks and was sentenced to 120 days in jail, suspended, and placed on probation for two years. Although she made partial payments throughout the probation period, as of November 3, 2011, she still had an unpaid balance of $3,538.28.[11] She made additional payments in June 2016, and even more payments in September 2016.[12] As of the date of the hearing, Applicant still owed the automobile salvage company $400.[13]

In October 2014, Applicant stated to the OPM investigator that her financial situation was good, and that she was making "good money" now. When she was confronted with a list of delinquent accounts, she initially said she was unaware of the delinquencies, although she acknowledged some of the accounts. She indicated that she would contact each creditor to inquire about the accounts, and if the debt was her responsibility, she would pay it off entirely.[14] Between that October 2014 interview and the September 2016 hearing, Applicant made no effort to address any of her delinquent debts other than her worthless checks.[15] She noted that some of the charges are "pretty stale and pretty old," and that nobody is hounding her or attempting to garnish her wages.[16] In the fall of 2015, Applicant re-enrolled in college in pursuit of her bachelor's degree, with an eye on obtaining a federal civil service position.

In addition to her Chapter 13 bankruptcy and the worthless checks, the SOR identified 25 purportedly delinquent debts that had been placed for collection or charged off, or filed as judgments, as generally reflected by her August 2014 credit report or her August 2015 credit report. Those debts total approximately $41,883. Their current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

There are the following medical-related accounts that were placed for collection in the years indicated with the unpaid balances that have not been addressed by Applicant: $146 in 2012 (SOR ¶ 1.d.); $295 in 2011 (SOR ¶ 1.h.); $187 in 2010 (SOR ¶ 1.i.); $324 in 2010 (SOR ¶ 1.j.); $631 in 2011 (SOR ¶ 1.k.); $234 in 2009 (SOR ¶ 1.l.); $17,043 in 2010 (SOR ¶ 1.m.); $1,298 in 2010 (SOR ¶ 1.n.); $130 in 2008 (SOR ¶ 1.q.); $262 in

[10] GE 2, *supra* note 3, at 3.

[11] AE D (Letter, dated November 3, 2011).

[12] AE H (Court Payment System Receipt, dated September 19, 2016).

[13] Tr. at 44-45.

[14] GE 2, *supra* note 3, at 3-5.

[15] Tr. at 49.

[16] Tr. at 40-41.

2012 (SOR ¶ 1.r.); $1,829 in 2012 (SOR ¶ 1.x.); and $1,829 in 2012 (SOR ¶ 1.y.). None of the accounts have been resolved.

The remaining delinquent accounts were placed for collection, charged off, or filed as judgments in the years indicated with the unpaid balances that have not been addressed by Applicant: an automobile loan for $2,605 that was charged off in 2010 and eventually filed as a judgment for $3,000 (SOR ¶¶ 1.b. and 1.o.); a credit union "stretch loan" that was filed as a judgment for $2,489 in 2009 (SOR ¶ 1.c.); a cellular telephone account for $730 in 2014 (SOR ¶ 1.e.); a cable television account for $2,528 in 2015 (SOR ¶ 1.f.); a cable television account for $249 in 2013 (SOR ¶ 1.g.); a satellite television account for $63 in 2013 (SOR ¶ 1.p.); a credit union loan for $448 in 2012 (SOR ¶ 1.s.); a credit union credit card for $223 in 2008 (SOR ¶ 1.t.); an unknown type of bank loan for $1,088 in 2014 (SOR ¶ 1.u.); a note loan for $160 in 2008 (SOR ¶ 1.v.); and a telephone account for $1,670 in 2014 (SOR ¶ 1.w.). None of the accounts have been resolved.

In addition to the above accounts, there is a furniture store account for $2,422 that was placed for collection in 2014 (SOR ¶ 1.z.). Applicant contends that the account was paid off. She indicated the creditor unsuccessfully sued her, but she proved she had made the necessary payments. She also said that she still has the furniture.[17] She failed to submit any documentation, such as receipts, cancelled checks, or account statements, to support her contentions that the account had been resolved. In the absence of such documentation, there is insufficient evidence to conclude that the account has been resolved.

On October 7, 2016, Applicant submitted a Personal Financial Statement to reflect $2,014.18 as her net monthly income; $910 in normal monthly expenses plus $470 in debt payments; and a monthly remainder of $634 available for discretionary spending or savings.[18] Applicant contends that she has no other delinquencies. Her annual salary, as of August 2014, was $41,600, with benefits, including healthcare and a retirement plan.[19] There is no evidence of financial counseling. With approximately $41,883 in delinquent bills, none of which have been addressed by Applicant, despite having the reported monthly remainder, and claiming that her financial house is in order, it appears that Applicant's finances are still not under control, either because of insufficient funds, or her refusal to resolve her delinquent debts.

Personal Conduct

On August 5, 2014, when Applicant completed her e-QIP, she responded to certain questions pertaining to his financial record. The questions in Section 26 – Financial Record asked if, in the last seven years, she had: bills or debts turned over to a collection agency; or if any account or credit card was suspended, charged off, or cancelled for failing to pay as agreed. Applicant answered "no" to both of those questions. She certified

[17] Tr. at 51-52.

[18] AE I (Personal Financial Statement, dated October 7, 2016).

[19] AE A (Letter, dated July 30, 2014).

that the responses were "true, complete, and correct" to the best of her knowledge and belief, but the responses to those questions were, in fact, false.

Applicant subsequently denied intending to falsify her responses, and explained that she had tried to complete the form at work one day but that she had to take it home to obtain certain necessary information. She claimed that she was given only 48 hours to complete the form. She completed the paper form, and the information was entered into the computer by the security office. She reviewed the final product and signed it. Applicant attributed her response to "oversight" by her.[20]

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."[21] As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[22]

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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

In the decision-making process, facts must be established by "substantial evidence."[23] The Government initially has the burden of producing evidence to establish

[20] Tr. at 35-37, 53-55.

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

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

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

a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[24]

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[25]

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."[26] Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

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

> Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental

[24] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[25] *Egan*, 484 U.S. at 531.

[26] *See* Exec. Or. 10865 § 7.

> health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. Under ¶ 19(a), an "inability to satisfy debts*"* is potentially disqualifying. In addition, ¶ 19(b) may apply if there is an "unwillingness to satisfy debts regardless of the ability to do so." Similarly, under ¶ 19(c), "a history of not meeting financial obligations*"* may raise concerns. Applicant's history of financial problems commenced before she filed for Chapter 13 bankruptcy in 2006. She wrote eight worthless checks in 2008, and she opened, used, and subsequently ignored 25 accounts that became delinquent. Her debts were placed for collection or charged off, or filed as judgments. The vast majority of her debts, including those as miniscule as $63 or $130 are still unresolved, despite Applicant's claims that she has her financial house in order. ¶¶ 19(a), 19(b), and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under ¶ 20(a), the disqualifying condition may be mitigated where "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Also, under ¶ 20(b), financial security concerns may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances." Evidence that "the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control*"* is potentially mitigating under ¶ 20(c). Similarly, ¶ 20(d) applies where the evidence shows "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts."[27] In addition, ¶ 20(e) may apply if "the individual has a reasonable basis to dispute the legitimacy of the past-

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

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

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

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."

I have concluded that ¶ 20(b) minimally applies, and ¶¶ 20(a), 20(c), 20(d), and 20(e) do not apply. The nature, frequency, and recency of Applicant's continuing financial difficulties since about 2005 make it difficult to conclude that it occurred "so long ago" or "was so infrequent," or that it is "unlikely to recur." She attributed losing her job and the medical bills for her children as the sole factors leading to her financial difficulties. Those factors clearly became somewhat stale issues that, over time, or at least since she obtained a new job, should have been overcome. During Applicant's most recent period of unemployment, she was supported by her boyfriend and unemployment compensation, and essentially spent her time watching television. She made no mention of searching for another job. While being laid off and becoming unemployed were factors largely beyond her control, under the circumstance described by her, it appears that she failed to make any effort to change her circumstances. She seemed to be sufficiently comfortable doing nothing regarding her debts. There is little evidence that she made good-faith efforts to address her debts since 2007. The only exception seems to be her rather slow compliance with the court-mandated repayments regarding the worthless checks she uttered in 2008. Despite the monthly remainder, Applicant chose to spend her available funds for purposes other than resolving even the smallest of her delinquent debts. That position indicates the absence of any priority to timely address those aging debts. There is also an inference that she is simply waiting for the debts to drop off her credit reports. There is no evidence of financial counseling. There is no evidence of disputes.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of each and every debt alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in an SOR be paid first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time. In this instance, there are no references to a plan and there are lengthy periods of inactivity.

There is little evidence to reflect that Applicant's financial problems are yet under control. Under the circumstances, Applicant has not acted responsibly by failing to address nearly all of her delinquent accounts and by failing to initiate meaningful efforts to work with her older creditors.[28] She failed to submit documentation to support her purported efforts regarding one debt. Applicant's actions, or relative inaction, under the

[28] "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.

circumstances casts substantial doubt on her current reliability, trustworthiness, and good judgment.[29]

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in ¶ 18:

> 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:
>
> > (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and
> >
> > (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

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

> deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

It is also potentially disqualifying under ¶ 16(c), if there is

> 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

[29] *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

indicating that the individual may not properly safeguard classified or sensitive information;

As noted above, on August 5, 2014, when Applicant completed her e-QIP, she responded to two questions pertaining to her financial record. The questions in Section 26 – Financial Record asked if, in the last seven years, she had: bills or debts turned over to a collection agency; or if any account or credit card was suspended, charged off, or cancelled for failing to pay as agreed. Applicant answered "no" to both of those questions. She certified that the responses were "true, complete, and correct" to the best of her knowledge and belief, but the responses to those questions were, in fact, false. Applicant subsequently denied intending to falsify her responses, and offered several explanations for her responses: she had tried to complete the form at work one day but that she had to take it home to obtain certain necessary information; she was given only 48 hours to complete the form; she completed the paper form, and the information was entered into the computer by the security office. However, Applicant reviewed the final product and signed it. Applicant later attributed her response to "oversight."

Applicant's comments provide sufficient evidence to examine if her submission was a deliberate falsification, as alleged in the SOR, or merely an omission that was the result of oversight or misunderstanding of the true facts on her part. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the falsification or omission occurred. As an administrative judge, I must consider the record evidence as a whole to determine whether there is a direct or circumstantial evidence concerning Applicant's intent or state of mind at the time the alleged falsification or omission occurred. I have considered the entire record, including Applicant's initial and subsequent comments to the OPM investigator.[30] Her statements are a plethora of misstatements and falsehoods: She said that she was unaware that she had delinquent accounts; then she said that she knew of the accounts, but was not aware that they were delinquent; then she explained that she did not have enough funds to continue making payments under her Chapter 13 bankruptcy payment plan; then she said that there were four bounced checks, when there were actually eight bad checks; then she said that she was placed on probation for six months, but her probation was actually for two years; then

[30] The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

> (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). *See also* ISCR Case No. 08-05637 at 3 (App. Bd. Sept. 9, 2010) (noting an applicant's level of education and other experiences are part of entirety-of-the-record evaluation as to whether a failure to disclose past-due debts on a security clearance application was deliberate).

she said that her financial situation was good, and that she was making "good money;" and that she would contact each creditor to inquire about the accounts, and if the debt was her responsibility, she would pay it off entirely. Those comments were untrue.[31] Applicant also issued eight worthless checks for something of value in 2008, and in 2009, she was convicted. ¶¶ 16(a) and 16(c) have been established.

The guideline also includes examples of conditions under ¶ 17 that could mitigate security concerns arising from personal conduct. They include:

> (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 advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. 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 contributed to 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;

[31] The SOR did not allege that Applicant made a false statement to the OPM investigator in her interview. 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)). See also ISCR Case No. 08-09232 at 3 (App. Bd. Sept. 9, 2010) (stating that inconsistent statements in exhibits may be considered in assessing an applicant's credibility and evaluating mitigation and rehabilitation evidence even though they are not cited in the SOR as raising a security concern). I have considered Applicant's non-SOR OPM interview explanations for not disclosing the truth regarding her finances only for purposes of (a), (b), (c), and (e) and not for any other purpose.

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, 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.

I have concluded that none of the mitigating conditions apply. Applicant's actions in issuing eight worthless checks in 2008 may have taken place long ago, but the fact remains that to this date, over eight years later, she still has not paid the victim the court-mandated reimbursement for the largest check, the one for $400. In addition, her falsification regarding her finances in her August 2014 e-QIP by intentionally failing to disclose the true extant of her financial difficulties is recent, serious, and not mitigated. A key component of the protection of classified information is reliance on security clearance holders to accurately report potential compromise of classified information. A person who has so many delinquent accounts, and who denies having them on their e-QIP cannot be relied upon to report potential compromise of classified information. Applicant's actions, or relative inaction, under the circumstances casts substantial doubt on her current reliability, trustworthiness, and good judgment.

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 SEAD 4, App. A, ¶ 2(d):

(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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[32]

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

There is some evidence in favor of mitigating Applicant's conduct. There is no evidence of misuse of information technology systems, or mishandling protected information. She acknowledged having some financial difficulties regarding a student loan when she completed her e-QIP. She was laid off and unemployed on two separate occasions.

The disqualifying evidence under the whole-person concept is simply more substantial. Applicant has an extensive history of financial problems that commenced before she filed for Chapter 13 bankruptcy in 2006. She wrote eight worthless checks in 2008, and she opened, used, and subsequently ignored 25 accounts that became delinquent. Her debts were placed for collection or charged off, or filed as judgments. During her most recent period of unemployment, Applicant was supported by her boyfriend and unemployment compensation, and essentially spent her time watching television. She made no mention of searching for a job. When asked about her finances when completing her e-QIP, and subsequently by an OPM investigator, Applicant falsified and concealed the truth about her finances.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[33]

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

Applicant has demonstrated an extremely poor track record of debt reduction and elimination efforts, aggressively avoiding most of the long-standing debts in her name. Her actions in issuing eight worthless checks, as well as her intentional falsification regarding her finances, are equally troubling. Overall, the evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns

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

arising from her financial considerations and personal conduct. *See* SEAD 4, App. A, ¶ 2(d)(1) through AG ¶ 2(d)(9).

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.n.:	Against Applicant
Subparagraph 1.o.:	Duplicate of 1.b.
Subparagraphs 1.n. through 1.aa.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a. and 2.b.:	Against Applicant

Conclusion

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

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ROBERT ROBINSON GALES
Administrative Judge