



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



In the matter of:

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Applicant for Public Trust Position

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ADP Case No. 15-04099

**Appearances**

For Government: Chris Morin, Esquire, Department Counsel

For Applicant: *Pro se*

08/20/2016

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant has mitigated the trustworthiness concerns regarding financial considerations. Eligibility to occupy a public trust position is granted.

**Statement of the Case**

On August 28, 2014, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP).<sup>1</sup> On December 7, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, pursuant to DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended and modified (Regulation); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the DOD on September 1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged trustworthiness concerns under Guidelines F (Financial Considerations) and E (Personal Conduct), and detailed

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<sup>1</sup> GE 1 (e-QIP, dated August 28, 2014).

reasons why the DOD adjudicators were unable to make an affirmative finding under the Directive that it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for occupying a public trust position to support a contract with the DOD. The SOR recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a sworn statement, dated January 13, 2016, Applicant responded to the SOR allegations and elected to have her case decided on the written record in lieu of a hearing.<sup>2</sup> However, on February 17, 2016, pursuant to ¶ E3.1.7 of the Additional Procedural Guidance of Enclosure 3, of the Directive, Department Counsel requested a hearing before an administrative judge.<sup>3</sup> On March 8, 2016, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on April 21, 2016. A Notice of Hearing was issued on May 9, 2016. I convened the hearing, as scheduled, on May 18, 2016.

During the hearing, five Government exhibits (GE 1 through GE 5), six Applicant exhibits (AE A through AE F), and two administrative exhibits, were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on May 26, 2016. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. She timely submitted a number of additional documents, which were marked as AE G and AE H, and admitted into evidence without objection. The record closed on June 15, 2016.

### **Findings of Fact**

In her Answer to the SOR, Applicant denied, with comments, both the factual allegations pertaining to financial considerations (¶ 1.a.) as well as the factual allegations pertaining to personal conduct (¶ 2.a.) of the SOR. Applicant's 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 47-year-old employee of a defense contractor. She has been a full-time claims examiner for a defense contractor since May 1989.<sup>4</sup> She is seeking to retain her eligibility for occupying a public trust position to support a contract with the DOD. She has never served in the U.S. military.<sup>5</sup> She is a 1987 high school graduate with some college credits, but no degree.<sup>6</sup> Applicant was married in 1988.<sup>7</sup> She has one daughter, born in 1988, and one son, born in 1990.<sup>8</sup>

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<sup>2</sup> Applicant's Answer to the SOR, dated January 13, 2016).

<sup>3</sup> Administrative Exhibit I (Letter, dated February 17, 2016).

<sup>4</sup> GE 1, *supra* note 1, at 9.

<sup>5</sup> GE 1, *supra* note 1, at 11.

<sup>6</sup> Tr. at 28.

## Financial Considerations<sup>9</sup>

A review of Applicant's September 2014 credit report reveals only one past-due account, and it pertains to a bank home mortgage account (with bank A) with a high credit of \$328,375, a past-due balance of \$93,642, and an unpaid balance of \$318,182, that was placed for collection upon becoming 180 days past due in 2014. Foreclosure proceedings were initiated (SOR ¶ 1.a.).<sup>10</sup> All of the remaining active accounts were listed as current. A review of Applicant's November 2015 credit report reveals two "snapshot" listings of the same account with the same bank (bank A) and with a mortgage lender, both of which reflect a zero balance and nothing past due. The listing for the bank (bank A) notes that the account was transferred or sold.<sup>11</sup> All of the remaining active accounts were listed as current.

There is some confusion regarding the actual status of the mortgage account. Applicant contended on the date of the hearing in May 2016 that she was still residing in the residence and still paying property taxes.<sup>12</sup> She also received a Form 1098, *Mortgage Interest Statement*, for 2015 which reflected that she had paid \$1,206.53 in second mortgage interest during 2015.<sup>13</sup> According to extracts of an October 2015 TransUnion credit report and an undated Equifax credit report, Applicant made her last payment to a subsidiary of bank A (bank B) on August 15, 2011.<sup>14</sup> Foreclosure was supposedly initiated at some point before May 2013, and the account was transferred to another office or another lender in April 2015.<sup>15</sup> As of April 2015, there was no balance owed to either bank A or bank B.<sup>16</sup> An extract of a September 2015 Experian credit report supplements that scenario. Applicant's account with bank A was in a current status through June 2009. It went into a delinquent status of between 60 and 180 days past due until July 2013 when foreclosure proceedings commenced. The account was closed in May 2015, and the account was transferred to another lender.<sup>17</sup>

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<sup>7</sup> GE 1, *supra* note 1, at 13.

<sup>8</sup> GE 1, *supra* note 1, at 17.

<sup>9</sup> General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 2 (Combined Experian, TransUnion, and Equifax Credit Report, dated September 11, 2014); GE 3 (Equifax Credit Report, dated November 24, 2015); Applicant's Answer to the SOR, *supra* note 2. More recent information can be found in the exhibits furnished and individually identified.

<sup>10</sup> GE 2, *supra* note 9, at 6.

<sup>11</sup> GE 3, *supra* note 9, at 4.

<sup>12</sup> Tr. at 39-40; AE F (Tax Notice – Real Property Taxes, dated September 19, 2015).

<sup>13</sup> AE G (Statement, dated June 3, 2016); AE H (Form 1098, undated).

<sup>14</sup> AE C (Extract of TransUnion Credit Report, dated October 29, 2015); AE D (extract of Equifax Credit Report, undated).

<sup>15</sup> AE C, *supra* note 14.

<sup>16</sup> AE C, *supra* note 14; AE D, *supra* note 14.

<sup>17</sup> AE E (Extract of Experian Credit Report, dated September 1, 2015).

Applicant was sued in a foreclosure action on October 18, 2011. According to a July 2014 Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment in the foreclosure action brought by bank A, as a successor to bank B, formerly known as bank C, against Applicant, her husband, her second mortgage holder, and Applicant's homeowners association. Applicant had purchased her residence on July 31, 2008 with a mortgage in the amount of \$328,375 from mortgage lender D. In June 2011, the mortgage was assigned to bank B. Monthly mortgage payments supposedly ceased and the mortgage went into a default status in June 2011.<sup>18</sup> On February 28, 2014, the court issued a foreclosure judgment.<sup>19</sup> On October 22, 2014, an Order Denying Plaintiff's Motion for Summary Judgment as to Damage was issued. It noted two important factors: (1) the evidence on file failed to show that there is no genuine issue as to any material fact; and (2) the plaintiff had not established that the defendants were delinquent on the mortgage at the time the action was commenced.<sup>20</sup> On March 2015, a foreclosure judgment was issued.<sup>21</sup> No deficiency damage amounts were awarded to any of the named plaintiffs.<sup>22</sup> There is no evidence of an appeal being made by the plaintiffs. Applicant filed a motion for a new trial, a relief from judgment, and a stay of sale.<sup>23</sup> The results of her efforts were not reflected in the court file, but on July 21, 2015, bank A filed a notice for a foreclosure sale.<sup>24</sup> A foreclosure sale was held on August 3, 2015, and the property was sold for \$300,000. The foreclosure deed was issued on October 16, 2015.<sup>25</sup>

Applicant is insistent that she or her husband makes mortgage payments to her credit union.<sup>26</sup> That credit union happens to be the holder of her second mortgage. When asked if she was aware that she had both a first and a second mortgage, Applicant was not sure because her husband handles "all of that."<sup>27</sup> She subsequently acknowledged that the credit union held her second mortgage.<sup>28</sup> She also stated that at some point bank A refused her monthly payments because of the pending foreclosure litigation.<sup>29</sup> Applicant was asked to furnish documentation from her checking account, bank A, her credit union, and her income tax records to support her contentions that

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<sup>18</sup> AE A (Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment, dated July 30, 2014).

<sup>19</sup> GE 4 (Court Public Index, dated March 8, 2016), at 1.

<sup>20</sup> AE B (Order Denying Plaintiff's Motion for Summary Judgment, dated October 22, 2014).

<sup>21</sup> GE 5 (Foreclosure Deed, dated October 16, 2015), at 1.

<sup>22</sup> GE 4, *supra* note 19, at 1-2.

<sup>23</sup> GE 4, *supra* note 19, at 1.

<sup>24</sup> GE 4, *supra* note 19, at 1.

<sup>25</sup> GE 5, *supra* note 21.

<sup>26</sup> Tr. at 40.

<sup>27</sup> Tr. at 43, 62-63, 66.

<sup>28</sup> AE G, *supra* note 13.

<sup>29</sup> Tr. at 54-55.

payments were being made or rejected.<sup>30</sup> She subsequently responded that bank A no longer exists in her town and the successor bank does not have any of the requested bank records; that her husband, an individual on disability since approximately 2008 or 2009,<sup>31</sup> and she have a joint account; and he “forbids” Applicant from furnishing any of his personal banking information and assets.<sup>32</sup> In complying with her husband’s order, Applicant failed to submit any documentation to support her contention that mortgage payments were made related to her first mortgage or that bank A refused to accept her mortgage payments. She denied ever receiving a Form 1099-A, *Acquisition or Abandonment of Secured Property*, or Form 1099-C, *Cancellation of Debt*.<sup>33</sup>

Department Counsel has argued that because the unpaid balance allegedly owed to the mortgage lender and its various alter-egos was \$328,000, and the residence sold for \$300,000, there was a deficiency of \$28,000 that was still owed by Applicant.<sup>34</sup> That is inaccurate. Under the law of the state in which the property was located and the court foreclosure order was issued, a mortgage lender must sue a delinquent borrower to obtain a foreclosure. A mortgage lender intending to pursue a deficiency judgment must do so as part of the foreclosure lawsuit. The complaint should contain language that indicates the mortgage lender is either waiving or reserving the right to a deficiency judgment. If the mortgage lender waives the right to a deficiency judgment, the mortgage lender cannot later sue the borrower to recover the deficiency.<sup>35</sup> As noted above, no deficiency damage amounts were awarded by the court to any of the named plaintiffs.

Because of her husband’s refusal to permit Applicant to disclose family financial information, she failed to submit a personal financial statement indicating her net monthly income and her husband’s monthly disability payments; her normal monthly expenses; and any monthly remainder available for saving or spending. Nevertheless, in the absence of any additional delinquent accounts, it appears that Applicant’s financial problems are under control.

## **Personal Conduct**

On August 28, 2014, when Applicant completed her e-QIP, she responded to questions pertaining to her financial record. Several of those questions in Section 26 – Financial Record – asked if, in the past seven years, she had been over 120 days delinquent on any debt not previously entered; or if she was currently over 120 days

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<sup>30</sup> Tr. at 55-57.

<sup>31</sup> Tr. at 31.

<sup>32</sup> AE G, *supra* note 13.

<sup>33</sup> Tr. at 41, 44-45, 60, 65, 69.

<sup>34</sup> Tr. at 68.

<sup>35</sup> S.C. Code Ann. § 29-3-660; S.C. Rules Civ. Proc. Rule 71(b).

delinquent on any debt. Applicant answered “no” to those questions. She certified that the responses were “true, complete, and correct” to the best of her knowledge and belief,<sup>36</sup> but the response to those questions may have been, in fact, incorrect, for at that time Applicant had a mortgage account that may have fallen within the stated parameters. Applicant has been steadfast in her denial that she was delinquent in her mortgage payments, and she contended that although bank A claimed she was, she disputed that issue, and they were in litigation in an effort to correct the record and have her credit report updated.<sup>37</sup>

## 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 [position of public trust].”<sup>38</sup> 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. Positions designated as ADP-I and ADP-II are classified as “sensitive positions.”<sup>39</sup> “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.”<sup>40</sup> Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.<sup>41</sup>

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for a public trust position.

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 common

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<sup>36</sup> GE 1, *supra* note 1, at 26-27, 30.

<sup>37</sup> Applicant’s Answer to the SOR, *supra* note 2, at 1-2; Tr. at 17, 60-62.

<sup>38</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>39</sup> Regulation ¶¶ C3.1.2.1.1.7, C3.1.2.1.2.3, and C3.1.2.2. See also Regulation app. 10, ¶ 10.2. It should be noted that a memorandum from the Deputy Under Secretary of Defense for Counterintelligence and Security, *Adjudication of Trustworthiness Cases*, dated November 19, 2004, covers the handling of trustworthiness cases under the Directive. The memorandum directed DOHA to continue to utilize the Directive in ADP contractor cases for trustworthiness determinations.

<sup>40</sup> Regulation ¶ C6.1.1.1.

<sup>41</sup> Regulation ¶ C8.2.1.

sense 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.”<sup>42</sup> The Government initially has the burden of producing evidence to establish 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.<sup>43</sup>

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. Furthermore, security clearance determinations, and by inference, public trust determinations, should err, if they must, on the side of denials.<sup>44</sup> 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 trustworthiness concern relating to the guideline for Financial Considerations 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

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<sup>42</sup> “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 (4<sup>th</sup> Cir. 1994).

<sup>43</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>44</sup> *Egan*, 484 U.S. at 531.

questions about an individual's reliability, trustworthiness and ability to protect [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise trustworthiness concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Also, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise trustworthiness concerns. Applicant's sole financial problems supposedly arose in June 2011, the same time that her home mortgage was assigned from bank A to bank B. The mortgage lender and its various alter-egos denied receiving any further mortgage payments, but Applicant contended that such payments were being made by her or her husband to her credit union, the holder of her second mortgage. Despite her protestations, a foreclosure ensued and the residence was sold. Applicant failed to submit documentation to support her contentions regarding her continuing payments. There is no evidence of any other delinquent debts. Under these disputed circumstances, there is no evidence of an inability or unwillingness to satisfy debts, and AG ¶ 19(a) has not been established. However, because the foreclosure was ordered by the court and the house was sold, AG ¶ 19(c) has been established.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. Under AG ¶ 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 AG ¶ 20(b), financial trustworthiness 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."<sup>45</sup> In addition, AG ¶ 20(e) may apply

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<sup>45</sup> The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

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



if “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the basis of the dispute or provides evidence of actions to resolve the issue.”

AG ¶¶ 20(a), 20(c), 20(d), and 20(e) partially apply. AG ¶ 20(b) does not apply. The nature of Applicant’s financial dispute with her mortgage lender and its various alter-egos from 2011 until 2015 occurred under such circumstances that it is unlikely to recur. When the foreclosure was ordered and the house was sold without any deficiency, the problem was finally resolved and it is now under control. In the absence of documentation reflecting Applicant’s mortgage payments, there is, however, evidence of Applicant’s good-faith efforts to resolve her mortgage situation in court. Contending that she had continued making her mortgage payments, Applicant had a reasonable basis to dispute the legitimacy of the alleged past-due debt which is the sole basis of the dispute. There is little evidence articulated that indicates the dispute was in some way beyond Applicant’s control. She either made her mortgage payments or she did not, and the best evidence in resolving the issue is documentation in the form of cancelled checks, bank records, and receipts, none of which was offered.

The sole alleged debt in the SOR was resolved in March 2015, approximately nine months before the SOR was issued – a fact that should have been known to the DOD CAF. The SOR allegation states that as of the date of the SOR, the account “remains delinquent,” but the Government’s own evidence (the September 2014 credit report, the November 2015 credit report, and the court records) reflect no further financial liability by Applicant. The residence was foreclosed in March 2015 and sold in August 2015, and the debt was wiped out. In the absence of any other financial delinquencies, Applicant’s finances are under control. Her actions do not cast doubt on her current reliability, trustworthiness, or good judgment.

### **Guideline E, Personal Conduct**

The trustworthiness concern relating to the guideline for Personal Conduct is set out 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 [sensitive] information. Of special interest is any failure to provide truthful and candid answers during the [trustworthiness eligibility] process or any other failure to cooperate with the [trustworthiness eligibility] process.

The guideline notes a condition that could raise trustworthiness concerns. Under AG ¶ 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

On August 28, 2014, when Applicant completed her e-QIP, she responded to questions pertaining to her financial record. Several of those questions in Section 26 – Financial Record – asked if, in the past seven years, she had been over 120 days delinquent on any debt not previously entered; or if she was currently over 120 days delinquent on any debt. Applicant answered “no” to those questions. She certified that the responses were “true, complete, and correct” to the best of her knowledge and belief, but the response to those questions may have been, in fact, incorrect, for at that time Applicant had a mortgage account that may have fallen within the stated parameters. Applicant has been steadfast in her denial that she was delinquent in her mortgage payments, and she contended that although her mortgage lender claimed she was, she disputed that issue, and they were in litigation in an effort to correct the record and have her credit report updated.

Applicant’s response provides sufficient evidence to examine if her submission was a deliberate falsification, as alleged in the SOR, or merely 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 administrative judge, I must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning Appellant’s intent or state of mind at the time the alleged falsification or omission occurred.<sup>46</sup> I have considered the entire record, including the absence of other delinquent accounts; her lengthy efforts to correct what she considered false information promoted by her mortgage lender; her steadfast insistence that she was making her mortgage payments; and her denial that she had falsified her response. I have concluded that her response as to the financial record is accurate and consistent with her true belief as to the financial situation. AG ¶ 16(a) has not been established.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a public trust position by considering the totality of the applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of

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<sup>46</sup> The Appeal Board has 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.

rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>47</sup>

There is some evidence against mitigating Applicant's conduct. She unwisely left her husband in substantial charge of the family finances, and she foolishly submitted to his refusal to allow her to submit documentation to me related to family finances. His actions raise suspicions regarding his purported mortgage payments and current family assets. Despite her efforts, the mortgage lender and its various alter-egos was successful in foreclosing on her residence and having it sold.

The mitigating evidence is more substantial and compelling. There is no evidence of misuse of information technology systems, mishandling protected information, or substance abuse. Applicant has been an employee for the same defense contractor since May 1989. Other than the one mortgage issue, Applicant's finances are in good order with no delinquent accounts, and they reflect her fiscal responsibility. The one SOR financial issue was resolved approximately nine months before the SOR was issued. There is no continuing financial responsibility associated with any deficiency. I conclude that there are clear indications that Applicant's finances are under control.

Overall, the evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a position of public trust. For all of these reasons, I conclude Applicant has mitigated the trustworthiness concerns arising from her financial considerations and personal conduct. See AG ¶ 2(a)(1) through AG ¶ 2(a)(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:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant

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<sup>47</sup> 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).

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility to occupy a public trust position to support a contract with DOD. Eligibility is granted.

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ROBERT ROBINSON GALES  
Administrative Judge