DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---	)	ISCR Case No. 15-04496
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: *Pro se*

09/28/2017

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 January 12, 2007, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.[1] She submitted a subsequent e-QIP on July 31, 2012.[2] On December 7, 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*

[1] GE 1 (e-QIP, dated January 12, 2007).

[2] GE 2 (e-QIP, dated July 31, 2012). Although the e-QIP indicates that Applicant certified the accuracy of the information on July 25, 2012, the signature page of the document was signed on two separate occasions: July 31, 2012, and July 31, 2014. Applicant could not recall why or if she signed the document twice.

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.[3] The SOR 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.

It is unclear when Applicant received the SOR as there is no receipt in the case file. On January 5, 2016, she responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on February 29, 2016. The case was initially assigned to another administrative judge hearing cases in the geographical region in which Applicant resided, but when Applicant's new address was reported, the case was reassigned to me on August 4, 2016. A Notice of Hearing was issued on September 7, 2016. I convened the hearing as scheduled on September 20, 2016.

During the hearing, 7 Government exhibits (GE) 1 and GE 7, 3 Administrative exhibits, and 34 Applicant exhibits (AE) A through AE AH were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on September 28, 2016. I kept the record open to enable Applicant to supplement it. She took advantage of that opportunity, and she submitted additional documents, which were admitted into evidence as AE AI through AE AZ without objection. The record closed on November 8, 2016.

Rulings on Procedure

Department Counsel moved to amend the SOR to conform to the evidence developed during the hearing. The first motion was to add a subparagraph 1.w. to the SOR: "You failed to file your federal and state income taxes, as required, for tax years 2012, 2013, 2014, and 2015." The second motion was to add a subparagraph 1.x. to the SOR: "You are indebted to your attorney . . . in the approximate amount of $22,000. As of the date of your hearing, September 20, 2016, this debt remains delinquent." There being no objection, both motions were granted, and the SOR was amended as stated above.[4]

[3] Effective June 8, 2017, by Directive 4 of the Security Executive Agent (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* (AG) 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.

[4] Tr. at 139-140.

Findings of Fact

In her Answer to the SOR, Applicant admitted, with comments, four of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.c., and 1.e.) of the SOR. She denied, with comments, all of the remaining allegations pertaining to financial considerations and personal conduct. 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 42-year-old full-time employee of two defense contractors (one during the day, and one at night), since October 2016. She is a consultant with one company and a subject matter expert with the other employer. With training and experience in information technology, Applicant previously had several relatively diverse short-term full-time and part-time positions with various employers. She is a 1993 high school graduate with technical school and college credits, but no degree. She served on active duty with the U.S. Army from January 1994 until she was honorably discharged as a specialist (E4) in June 1999. She served with the U.S. Army Reserve from May 2002 until she was again honorably discharged in November 2003. She was granted a secret security clearance in March 1994. She was also granted a top-secret security clearance in January 2001, and it was renewed in December 2007. Applicant currently holds a secret security clearance. Applicant has never been married. She has three children, including twin daughters born in 2000, and another daughter born in 2007.

Military Service and Awards and Decorations

During her military service, Applicant was deployed to Bosnia. She has been awarded the Joint Service Commendation Medal, the Army Commendation Medal, the Army Good Conduct Medal, the National Defense Service Medal, the Armed Forces Expeditionary Medal, the Armed Forces Services Medal, the Army Service Ribbon, the Overseas Service Ribbon, the Expert Marksmanship Qualification Badge with Grenade Bar, the Sharpshooter Marksmanship Qualification Badge with Rifle Bar, the North Atlantic Treaty Organization Medal, and the Mechanic Badge with Driver Bar.

Financial Considerations[5]

It is unclear when Applicant first started to experience financial difficulties, or what specific factors may have led to those difficulties. Applicant's 2007 e-QIP listed delinquencies from 2004. A review of her January 2007 credit report reveals a number of delinquent accounts from as far back as 2005 and 2006 that were placed for collection. A review of her August 2012 credit report reveals additional delinquent debts as well as two judgments. For several months in 2002, Applicant was unemployed, taking care of

[5] General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1, supra note 1; GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated January 30, 2007; GE 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 9, 2012; GE 6 (Equifax Credit Report, dated April 13, 2015; GE 7 (Equifax Credit Report, dated February 29, 2016; Applicant's Answer to the SOR, dated January 5, 2016; AE M (Equifax Credit Report, dated September 19, 2016); AE AH (Experian Credit Report, dated September 19, 2016).

her sick mother. One child has autism, and the other two have epilepsy, increasing her expenses. In 2007, after the birth of her youngest child, Applicant received a diagnosis of adjustment disorder with depressed mood (postpartum depression). In 2009, her three children were taken from her by the state child and family services authorities and placed into foster care. The two older children were in foster care for three months, and her youngest daughter was in foster care for six months. Custody was awarded to the father of the two oldest children at one point, and Applicant was granted supervised visitation. Applicant has custody of the youngest child. Applicant was charged $4,122 for foster care services. Also, in 2009, Applicant was dissatisfied with a vehicle that she had purchased that was damaged in an accident, and she eventually, voluntarily, returned it to the dealer. Although Applicant initially referred to several other periods of unemployment, in reality, those were periods of partial employment or underemployment, not unemployment. Applicant attributed her deteriorated health (a variety of health conditions including acid reflux, irritable bowel syndrome (IBS), and Crohn's disease), along with the "stress of having to make payments here, make payments there, and dealing with voluntary repossessions of vehicles" for some of her problems.

The SOR, as amended, identified 23 purportedly delinquent debts that had been placed for collection, charged off, or filed as judgments, as generally reflected by her various credit reports, as well as her failure to timely file federal and state income tax returns for the tax years 2012, 2013, 2014, and 2015. Those debts total approximately $83,869. 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.

(SOR ¶ 1.a.): This is a combination of child support obligations as well as unpaid arrearages regarding Applicant's twin daughters that was established by the state department of child support enforcement in 2010. The past-due amount was $29,448 as of March 2015, but that balance increased to $34,003 or $34,131 as of September 2016, depending on the credit report reviewed. During her interview with an investigator from the U.S. Office of Personnel Management (OPM) in August 2012, Applicant stated that her wages were being garnished $378 every two weeks to address the obligations, and that the matter was being disputed in court because the amount was based on incorrect estimated earnings. She also stated she could not discuss the matter as it was ongoing. Applicant failed to submit any documentation to support her contention that garnishments were carried out or that other payments were being made. During the hearing, Applicant contended that she had paid a combined total of $10,472 over the past five years, and has been making several monthly payments under the current court order specifying that $450 was for child support and $125 was for arrears. She failed to submit any documentation supporting her contention that any of the payments had been made under the current court order. Applicant subsequently submitted a check made out to the state treasurer, in the amount of $850, dated October 31, 2016, over a month after the hearing, reflecting one partial payment.[6] Considering the period of time the matter has been opened, and evidence of only one partial payment having been made – after the hearing

[6] AE AZ (Check, dated October 31, 2016).

– I conclude that the account has not yet reached the point of being in the process of being resolved.

(SOR ¶ 1.b.): This is an automobile loan with a high credit of $16,243 for a vehicle that Applicant was dissatisfied with, claiming it had a defect. It was also damaged in an accident, so she voluntarily surrendered it to the dealer. It is unclear what happened to the vehicle after it was returned. The account was placed for collection in 2009, and $7,742 was charged off. Applicant told the OPM investigator that she had attempted to establish a repayment plan, but no such plan was established. In her Answer to the SOR, she again stated an intention to contact the lienholder, but there is no evidence to confirm that she did so. During the hearing, Applicant contended that the debt had been removed from her credit report because of the alleged defect. She also stated that the creditor informed her that her account balance was now zero.[7] However, in November 2016, a collection agent wrote Applicant that they had been authorized to settle the account for $3,097.08, versus the actual balance of $7,742.66, and offered Applicant repayment terms.[8] Applicant offered no evidence that the settlement offer had been accepted. The account has not been resolved.

(SOR ¶ 1.c.): This is an automobile loan with a high credit of $15,876 for a vehicle that was repossessed, and $15,341 was charged off, leaving an unpaid balance of $5,041. Applicant contends she had a repayment agreement in 2014, and that she had made some partial payments under it. She failed to submit any documentation to confirm her contentions that an agreement existed or that payments were made. On September 20, 2016 – the same day as the hearing – the creditor made a settlement offer to Applicant, offering to settle the account with a remaining balance of $8,070.53 for $2,000, provided monthly payments of $83.33 are made for 24 months, commencing on October 18, 2016.[9] Applicant failed to submit any documentation to confirm even that the first such payment was made. The account has not been resolved.

(SOR ¶¶ 1.d., 1.i., 1.j., 1.l., 1.n., and 1.p.): These are various medical accounts with unidentified medical providers with outstanding balances of $2,295, $958, $571, $551, $373, and $324 that were placed for collection. Applicant told the OPM investigator that she was unaware of the accounts. She repeated her explanations in her Answer to the SOR and during the hearing. Applicant believes some of the accounts generated by the custodial parent were misdirected to her, but she had no evidence to support that belief. She also claimed that the last and smallest account was identified and refiled with the correct insurance carrier. Applicant failed to submit any documentation to reflect corrective actions taken by her, disputes made by her, or payments made by her. The accounts have not been resolved.

(SOR ¶ 1.e.): This is a bank credit card account with a $1,500 credit limit that became past-due, was placed for collection, and $1,843 was charged off. Applicant

[7] Tr. at 58.

[8] AE AY (Letter, dated November 3, 2016).

[9] AE S (Settlement Offer Agreement, dated September 20, 2016).

contended she had been making unspecified payments, and she had received two separate settlement offers, but she was unable to make the agreed payments. She claimed she reached out to the creditor before the hearing in an effort to reach another settlement. On October 19, 2016, the creditor noted that the account balance was still $1,843.14, but that it would agree to settle the account for $738, provided the payment was received no later than March 20, 2017.[10] Applicant failed to submit any documentation to confirm even that payments were made, or that the account had been paid off. The account has not been resolved.

(SOR ¶¶ 1.f., 1.g., 1.r., and 1.s.): These are student loan accounts with past-due balances of $1,562, $1,359, $2,030, and $1,334 that were placed for collection. Applicant claimed that she sought deferment due to economic hardship, but she was unable to remain on the payment plan. The accounts went into a default status. In November 2015, the U.S. Department of Education (DOE) offered Applicant a settlement. It agreed to accept $6,285.69 (in three payments each for $2,095.23) as a full settlement for her account with a balance of $8,546.27 (the principle balance was $6,232.66, fees and costs were $1,672.97, and interest was $640.64).[11] Applicant made one payment of $2,095.23 in December 2015.[12] Applicant initially contended during the hearing that she had made all three required payments under the settlement agreement, but moments later she acknowledged she had been unable to make the third required payment.[13] She failed to submit documentation to confirm that the second payment had been made. In March 2016, the DOE offered Applicant another settlement. It agreed to accept $4,432.42 (in three payments each of approximately $1,100) as a full settlement for her account with a balance of $4,432.28 (the principle balance was $3,543, fees and costs were $867.63, and interest was $21.65).[14] Applicant contends she made the payments and paid off the entire remaining balance as of May 6, 2016.[15] On September 21, 2016, the DOE acknowledged that no further payments are due.[16] The accounts have been resolved.

(SOR ¶¶ 1.h., 1.t., and 1.u.): This is a note loan with a high credit of $768 and a past-due and unpaid balance of $514 that was charged off and placed for collection. In 2010, the creditor obtained a judgment for $514, and that account was then sold to a debt purchaser. The debt purchaser increased the unpaid balance to $958. Some confusion existed because the creditor had changed its name. The SOR allegations reflect various versions of the timeline for the same account. Applicant claimed she did not recognize either the creditor or the debt purchaser, but she did recognize the original name of the creditor. Although Applicant informally disputed the account, claiming an account with the

[10] AE AU (Letter, dated October 19, 2016).

[11] AE A (Letter, dated November 18, 2015).

[12] AE B (Bank Statement, dated December 20, 2015).

[13] Tr. at 80-81.

[14] AE R (Letter, dated March 8, 2016).

[15] Tr. at 82-83.

[16] AE AO (Letter, dated September 21, 2016).

creditor had been satisfied, the account to which she referred was a different and unrelated account. She also offered evidence that an action filed by the creditor, under its original name, was filed in July 2009 and dismissed in October 2009,[17] but that action is different from the one that went to judgment in January 2010. There is no evidence that Applicant contacted the creditor of the debt purchaser or made payments to either entity. The account has not been resolved.

(SOR ¶ 1.k.): This is a cellular telephone account with a past-due and unpaid balance of $565 that was placed for collection. The account was sold to a debt purchaser and a settlement agreement was eventually reached calling for a one-time payment of $186.40. That payment was made in February 2016.[18] The account has been resolved.

(SOR ¶ 1.m.): This is a cellular telephone account with a past-due and unpaid balance of $513 that was placed for collection. A settlement agreement was eventually reached with the collection agent calling for a payment of $359.34.[19] There is no evidence that any payments totaling the agreed amount were ever made. The account has not been resolved.

(SOR ¶ 1.p.): This is a mattress store account with a past-due and unpaid balance of $286 that was placed for collection and sold to a debt purchaser. Applicant contended that she never had an account with the identified creditor.[20] She subsequently stated that she had settled the account with the creditor for $186 over the phone on November 7, 2016.[21] Nevertheless, Applicant failed to submit any documentation to confirm her contention that the account had been settled or that the payments had been made. The account has not been resolved.

(SOR ¶ 1.q.): This is an Internet cable or television account with an alleged unpaid balance of $285 that was placed for collection. The February 2016 credit report clearly reflects that the account has a zero balance,[22] and Applicant contends that the balance had been paid several years earlier.[23] The account has been resolved.

(SOR ¶ 1.v.): This is a residential lease with a past-due and unpaid balance of $2,200 which arose in 2011. The landlord-creditors obtained a judgment for $2,545 in August 2011. It is unclear what action occurred next, for Applicant contends the judgment should never have been entered because she forfeited her security deposit to cover the

[17] AE AK (Civil Case Details, undated).

[18] AE AW (Bank Statement, dated February 20, 2016); AE M, *supra* note 5, at 26; AE AH, *supra* note 5, at 29.

[19] AE AP (Payment Plan, undated).

[20] Tr. at 99.

[21] AE AS (Memorandum, dated November 4, 2016), at 2. While Applicant claimed to have settled the account on November 7, 2016, she made that declaration on November 4, 2016. Somewhere, her dates are confused.

[22] GE 7, *supra* note 5, at 2.

[23] AE AS, *supra* note 21, at 2.

unpaid rent. In November 2015, the judgment creditor notified the court that $2,910.06 had been paid in full, thereby paying off and otherwise satisfying the judgment.[24] Applicant did not submit documentation indicating that she had made that payment. Nevertheless, the account has been resolved.

(SOR ¶ 1.w.): Applicant failed to timely file her federal and state income tax returns for the tax years 2012, 2013, 2014, and 2015, claiming that she did not do so because she owed no taxes.[25] "[A]s long as I didn't have a tax debt, I didn't file."[26] She specifically denied that her decision not to file her income tax returns was to avoid having her refunds applied to her child support arrearage.[27] There is no evidence that the federal and state income tax returns for the identified years have yet been filed. The tax issues have not been resolved.

(SOR ¶ 1.x.): This refers to a legal representation agreement Applicant entered into in May 2012 under which the law firm agreed to represent Applicant in her child custody modification litigation, and Applicant agreed to pay for the legal services provided. As of October 2016, Applicant's unpaid balance was approximately $22,000.[28] Effective November 1, 2016, a repayment plan was established under which Applicant agreed to make monthly payments of $100 on or before the fifth day of each month until such time as she is able to make larger payments.[29] Although the record was kept open until November 8, 2016, and Applicant was to have made her initial payment under the agreement three days earlier, she failed to submit documentation to confirm that the initial payment had been timely made. The account has not yet reached the point of being in the process of being resolved.

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[24] AE C (Notice of Satisfaction, dated December 14, 2015).

[25] The legal requirement to file a federal income tax return is based upon certain conditions, including an individual's gross income and other enumerated conditions. Once it is determined that there is an obligation to so file, the following applies:

> Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 ($100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year".

26 U.S.C. § 7203, *Willful failure to file return, supply information, or pay tax.*

[26] Tr. at 110.

[27] Tr. at 112.

[28] AE E (Representation Agreement, dated May 30, 2012).

[29] AE AJ (Memorandum of Agreement, dated October 12, 2016).

Applicant completed financial counseling on two occasions. On an unspecified date, she completed a three-hour course of personal financial planning for transition which included topics such as understanding your credit score, making housing and other cost-of-living decisions, understanding how taxes change; and developing a budget.[30] In September 2016, she was enrolled in a series of classes called the 2106 women's financial series which included topics such as financial well-being checkup; building a better budget; and writing your personal financial policy.[31]

On September 6, 2016, a month before she joined her new employers, Applicant submitted a Personal Financial Statement to reflect her net monthly income, normal monthly expenses, including debt payments, and a monthly remainder available for discretionary spending or savings. At the time, her net monthly income was $1,914.50; her fixed expenses, including rent, child support, car payment, cellular phone, and Internet, was $2,646; her variable expenses, including utilities, food, gasoline, and medications, was $792; and her periodic expenses, including automobile insurance and maintenance, was $243. Applicant's total monthly expenses were $3,861. Those figures left her with a monthly deficit of $1,946.44 – essentially unable to pay a significant portion of her normal monthly bills, and clearly unable to address any of her delinquent accounts.[32] Applicant failed to submit evidence of her updated net monthly income although she would have been employed by her two new employers for approximately one month by the time the record closed. In the absence of information indicating that Applicant has eliminated her monthly deficit and transitioned into a monthly remainder, it remains unclear if Applicant's financial situation has improved, or if her finances are under control.

Personal Conduct

In January 2007, when Applicant completed her first e-QIP, she responded to certain questions pertaining to her financial record. She acknowledged that she had several delinquent accounts, and she listed four such accounts. She added "[t]here are additional ones in which I will discuss those with my investigator, during my interview phase."[33] On July 31, 2012, when she completed her second e-QIP, she again responded to certain questions pertaining to her financial record. The questions in Section 26 – Financial Record asked if, in the past seven years, she had: been delinquent on . . . child support payments; a judgment entered against her; possessions or property voluntarily or involuntarily repossessed or foreclosed; bills or debts turned over to a collection agency; any account or credit card suspended, charged off, or cancelled for failing to pay as agreed. Other questions asked if she is currently delinquent on any federal debt; or if any debts are or were 120 or more days delinquent. Applicant answered "no" to all 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.

[30] AE AC (Certificate, undated).

[31] AE AA (E-mail Stream, various dates).

[32] AE AF (Personal Financial Statement, dated September 6, 2016).

[33] GE 1, *supra* note 1, at 31-33.

Applicant subsequently denied intending to falsify her responses. She initially told the OPM investigator that she had many delinquent accounts and had listed them all in her e-QIP. When she was informed that none of her debts were mentioned, and confronted with information regarding the debts from her credit report, Applicant frequently claimed that she was unaware of a number of those debts. In her Answer to the SOR, Applicant stated:[34]

> In my response to the truthworthiness of my answers originally submitted on July 2012, was based on my knowledge of debts owed and those were addressed with the investigator. It was during my interview with the investigator that I did not need to fill out a financial disclosure form for small debts under $500.00 to which at the time of this interview, most of my outstanding debt was under that threshold. As for any other debt that may have been accumulated after the close of my investigation I was unaware I needed to make my security officer aware of any other debts. Considering the breech of my information bank in 2013, some of these debts may not be mine at all. Further investigation will need to be made on many of the accounts to which this letter speaks too. I have had a considerable stressful two year fight for custody, and with that my ability to keep track of all of my finances have dropped off.

During the hearing, Applicant added that she was unable to do her due diligence because she had very little time to prepare for the completion of the e-QIP. She added that because of her 2007 experience with the e-QIP, she anticipated the opportunity to expand on the issue of her finances with the OPM interviewer.[35] Applicant acknowledged that she was aware that she had delinquent student loans, the delinquent debts listed in her 2007 e-QIP, and a child support arrearage, but she denied knowing about any judgments or any other delinquent debts.

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."[36] 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."[37]

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[34] Applicant's Answer to the SOR, *supra* note 5, at 3.

[35] Tr. at 130-131.

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

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

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."[38] 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.[39]

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."[40]

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."[41] Thus, nothing in this decision should be construed to suggest that I have based this decision on any express

[38] "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).

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

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

[41] *See* Exec. Or. 10865 § 7.

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 AG ¶ 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 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 AG ¶ 19(a), an "inability to satisfy debts*"* is potentially disqualifying. In addition, AG ¶ 19(b) may apply if there is an "unwillingness to satisfy debts regardless of the ability to do so." Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations*"* may raise concerns. The "failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required" is potentially disqualifying under AG ¶ 19(f). Applicant's history of financial problems commenced as far back as 2002, and possibly earlier. During a period of over a decade, accounts were placed for collection, a vehicle was repossessed, student loans went into default, two accounts went to judgment, a child support arrearage grew, and Applicant failed to timely file her federal and state income tax returns for several years. AG ¶¶ 19(a), 19(b), 19(c), and 19(f) have been established.

The guideline also includes examples of conditions that could mitigate security 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."[42] Also, under AG ¶ 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 AG ¶ 20(c). Similarly, AG ¶ 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."[43] In addition, AG ¶ 20(e) may apply if "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue." Also, if "the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements," AG ¶ 20(g) may apply.

AG ¶¶ 20(b), 20(c), and 20(d) all minimally apply. None of the remaining mitigating conditions apply. The nature, frequency, and recency of Applicant's continuing financial difficulties since about 2004 make it difficult to conclude that it occurred "so long ago" or "was so infrequent," or that it is "unlikely to recur." Applicant attributed a number of life issues pertaining to her children's health, her health, and child custody, along with the "stress of having to make payments here, make payments there, and dealing with voluntary repossessions of vehicles" for some of her problems. She received financial counseling, but there is very little evidence that her financial difficulties have been resolved or are under control. To the contrary, the most recent information submitted by Applicant is that she has a monthly deficit of $1,946.44, and is essentially unable to pay a significant portion of her normal monthly bills. She is clearly unable to address any of her delinquent accounts. Aside from Applicant's verbal and written comments regarding the vast majority of her debts, there is little documentary evidence to support her claimed

[42] A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

[43] 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)).

good-faith efforts to address those debts. Of the 23 debts identified in the SOR that had been placed for collection, charged off, or filed as judgments, Applicant has been credited with resolving, or being in the process of resolving, only 7: the 4 student loans, a cellular telephone account, an Internet account, and one judgment for skipping out on her lease one month early. In addition, Applicant has still failed to file her federal and state income tax returns for the tax years 2012, 2013, 2014, and 2015, despite claiming that she is due refunds for those tax years. It remains unclear as to why Applicant would choose to delay obtaining refunds with respect to her taxes. Also, Applicant's observation that with her two new jobs, she will be in a better position to address her debts, is simply a hope for financial improvement, not a strategy for a financial plan.[44] Applicant was given guidance during the hearing as to the nature of recommended documentation, and she simply ignored much of that guidance. Because of the period of time that Applicant has essentially ignored her debts, there is an inference that she is simply waiting for the debts to drop off her credit reports.

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 an overall plan, and there are lengthy periods of inactivity.

Under the circumstances, Applicant has not acted responsibly by failing to address so many of her delinquent accounts and by failing to initiate meaningful efforts to work with his older creditors.[45] She failed to submit documentation to support her purported efforts regarding most of her debts. Applicant's actions, or relative inaction, under the circumstances casts substantial doubt on her current reliability, trustworthiness, and good judgment.[46]

[44] The Appeal Board has indicated that promises to pay off delinquent debts in the future was not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

[45] "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.

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

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 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 a condition that could raise security 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

As noted above, on July 31, 2012, when Applicant completed her e-QIP, she responded to certain questions pertaining to her financial record. The questions in Section 26 – Financial Record asked if, in the past seven years, she had: been delinquent on . . . child support payments; a judgment entered against her; possessions or property voluntarily or involuntarily repossessed or foreclosed; bills or debts turned over to a collection agency; any account or credit card suspended, charged off, or cancelled for failing to pay as agreed. Other questions asked if she is currently delinquent on any federal debt; or if any debts are or were 120 or more days delinquent. Applicant answered "no" to all 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. She initially told the OPM investigator that she had many delinquent accounts and had listed

them all in her e-QIP. When she was informed that none of her debts were mentioned, and confronted with information regarding the debts from her credit report, Applicant frequently claimed that she was unaware of a number of those debts. Her later comments were variations of her previous explanations: the debts were mostly under $500 and did not have to be reported because they were under that threshold; she was unaware she needed to make her security officer aware of those debts; she was unable to do her due diligence because she had very little time to prepare for the completion of the e-QIP; because of her 2007 experience with the e-QIP, she anticipated the opportunity to expand on the issue of her finances with the OPM interviewer; and she had a considerable stressful two-year fight for custody, and with that her ability to keep track of all of her finances have dropped off. In addition, Applicant noted that because of the breech of her information bank in 2013, some of the debts may not be hers.

Despite all of those explanations, Applicant acknowledged that she was aware that she had delinquent student loans, the delinquent debts listed in her 2007 e-QIP, and a child support arrearage, but she denied knowing about any judgments or any other delinquent debts.

Applicant's comments provide sufficient evidence to examine if her submissions were deliberate falsifications, 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.[47]

Applicant's explanations for her submissions, in my view, were that she essentially danced around the questions during her hearing. On the one hand she would have me believe that she is mature enough to hold a security clearance, and on the other hand, she would have me believe that she is ignorant and naive regarding her finances. Those inconsistent explanations stretch credulity. AG ¶ 16(a) has been established.

[47] 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).

The guideline also includes examples of conditions under AG ¶ 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;
>
> (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 falsifications regarding her finances in her July 31, 2012 e-QIP by intentionally failing to disclose the true extent 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 cast 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.[48]

There is some evidence in favor of mitigating Applicant's conduct. There is no evidence of misuse of information technology systems, mishandling protected information, or substance abuse. She is an honorably discharged former member of the U.S. Army. She was granted a top-secret security clearance in January 2001, and it was renewed in December 2007. Applicant currently holds a secret security clearance.

The disqualifying evidence under the whole-person concept is simply more substantial. Applicant has an extensive history of financial problems that commenced in about 2004. Numerous accounts, including student loans, became delinquent. Her debts were placed for collection or charged off. Two accounts went to judgment. A vehicle was repossessed. Her child support arrearage is or was over $34,000. She failed to timely file federal and state income tax returns for the tax years 2012, 2013, 2014, and 2015, and as of the closing of the record, still had not filed those tax returns. When asked about her finances while completing her most recent e-QIP, Applicant falsified and concealed the truth about her finances. Although she was offered the opportunity to submit documentation pertaining to her debts, as well as her purported efforts to resolve them, with some exceptions, she failed to do so. Her Personal Financial Statement reflects that she has a monthly deficit of $1,946.44, and is essentially unable to pay a significant portion of her normal monthly bills. She is clearly unable to address any of her delinquent accounts.

[48] *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).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[49]

> 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, seemingly avoiding resolution of most of the long-standing debts in her name. She owes over $34,000 in child support arrearage. Her intentional falsifications regarding her finances are 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 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
Subparas 1.a. through 1.e.:	Against Applicant
Subparas 1.f., 1.g., and 1.k.:	For Applicant
Subparas 1.h. through 1.j.:	Against Applicant
Subparas 1.l. through 1.p.:	Against Applicant
Subparas 1.q. through 1.s.:	For Applicant
Subparas 1.t. and 1.u.:	For Applicant
Subpara 1.v.:	For Applicant

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

Subparas 1.w. and 1.x.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparas 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.

_____
ROBERT ROBINSON GALES
Administrative Judge