



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



In the matter of:)
)
 ---) ADP Case No. 14-06258
)
 Applicant for Public Trust Position)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

02/23/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant has failed to mitigate the trustworthiness concerns regarding financial considerations and personal conduct. Eligibility to occupy a public trust position is denied.

Statement of the Case

On March 13, 2014, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On May 18, 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

¹ Item 5 (e-QIP, dated March 13, 2014).

Considerations) and E (Personal Conduct), and detailed 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 notarized statement, inadvertently dated June 12, 2014,² Applicant responded to the SOR allegations and elected to have her case decided on the written record in lieu of a hearing. She subsequently resent the same Answer to the SOR but added a one-page undated addendum.³ A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant on October 2, 2015, and she was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to her case. Applicant received the FORM on October 28, 2015. A response was due by November 27, 2015. On an unspecified date before November 2, 2015,⁴ Applicant submitted a one-page undated statement, which I marked as Applicant Exhibit (AE) A,⁵ and a one-page attachment which I marked as AE B,⁶ both of which were admitted into evidence without objection. The case was assigned to me on November 12, 2015.

Findings of Fact

In her Answers to the SOR, Applicant admitted nearly all of the factual allegations pertaining to financial considerations (§§ 1.a., 1.e. through 1.g., and 1.k. through 1.z.) of the SOR. She noted that §§ 1.c., 1.d., and 1.h. through 1.j. were duplicates, but failed to explain to which accounts the "duplicates" referred. She denied the one remaining allegation (§ 1.b.). Applicant's responses pertaining to the personal conduct allegations were not as clear for rather than admitting or denying the allegations, she offered an explanation regarding § 2.a., and no comments regarding § 2.b. Applicant's admissions 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 29-year-old employee of a defense contractor. She has been a full-time data entry clerk since August 2013. It is unclear if she is seeking to obtain or retain

² It should be noted that the affidavit-form upon which Applicant was to choose either a hearing or a decision based upon the administrative record, and list her contact information, and which the notary public was to sign, was a boilerplate preprinted form with "2014" furnished by the DOD CAF. Department Counsel confirmed the error.

³ Item 4 (Amended Answer to the SOR, undated).

⁴ Although the statement is undated, the attached document contains a rubber stamp indicating the document was received by the Defense Office of Hearings and Appeals (DOHA) on November 2, 2015.

⁵ AE A (Applicant's Answer to the FORM, undated).

⁶ AE B (Letter, dated October 27, 2015).

her eligibility for occupying a public trust position to support a contract with the DOD. She has never held a security clearance.⁷ She has never served in the U.S. military.⁸ She is a 2005 high school graduate with some college credits, but no degree.⁹ She also attended a career center and received a certification as a nurse's assistant in 2014.¹⁰ Applicant was married in February 2014.¹¹

Financial Considerations

Applicant has held a number of diverse jobs from 2006 until she obtained her current position, including collections (2006 – 2008), cashier (2008), receiving clerk (2008 – 2009), direct support associate (2009 – 2013), and data entry clerk (2013).¹² Nevertheless, as early as 2008, she had fallen behind in her monthly payments and her accounts became delinquent. She failed to timely file her federal and state income tax returns for the tax year 2013, or to pay her state income taxes for various years, including 2010, 2011, and 2013.¹³ Some accounts were placed for collection or charged off, and some accounts went to judgment.¹⁴ One vehicle was repossessed in 2008, and another, in 2011.¹⁵ Her checking account was garnished in 2014.¹⁶

When Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM) in April 2014, she discussed her delinquent accounts. She initially seemed to minimize the number of such accounts. Her comments regarding a number of her delinquent accounts reflected conscious decisions by her to stop making her monthly payments, but she failed to express any reasons for her decisions.¹⁷ She claimed to have no knowledge of some accounts and disagreed with other accounts. Once the delinquent accounts were identified and discussed with her, Applicant generally agreed to look further into some accounts and make payments if the accounts were deemed valid by her. As noted above, in October 2015 – 18 months after she spoke with the OPM investigator – Applicant approached one creditor in an effort to settle her delinquent account, and they agreed to a settlement amount.¹⁸ She failed to

⁷ Item 5, *supra* note 1, at 34.

⁸ Item 5, *supra* note 1, at 19.

⁹ Item 5, *supra* note 1, at 11; Item 7 (Personal Subject Interview, dated April 21, 2014), at 4.

¹⁰ Item 7, *supra* note 9, at 4.

¹¹ Item 7, *supra* note 9, at 22.

¹² Item 7, *supra* note 9, at 13-18.

¹³ Item 7, *supra* note 9, at 8-9.

¹⁴ See Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 8, 2014).

¹⁵ Item 7, *supra* note 9, at 9-10.

¹⁶ Item 7, *supra* note 9, at 8.

¹⁷ See for example Item 7, *supra* note 9, at 10-11.

¹⁸ AE B, *supra* note 6.

submit any documentation to indicate that she had made any payments on the agreed settlement. Although she claimed to be contacting other creditors to resolve delinquent accounts,¹⁹ she offered no documentation to support her contention that any other creditors had been approached.

The SOR identified one allegation that Applicant had failed to timely file her federal and state income tax returns for the tax year 2013, an allegation which she admitted, as well as 25 continuing delinquent accounts, totaling approximately \$25,772, which had been placed for collection, charged off, sent to judgment, or resulted in repossession.

Among the accounts for which there was no dispute, and regarding which she offered no indication that any resolution efforts had been taken, were the following: (SOR ¶ 1.e.: an electric utility account that was \$300 past due);²⁰ (SOR ¶ 1.f.: a telephone account that was \$271 past due);²¹ (SOR ¶ 1.g.: a department store account that was charged off in the amount of \$404);²² (SOR ¶ 1.k.: a cable television/Internet account that was \$150 past due);²³ (SOR ¶ 1.l.: a cellular telephone account that was \$202 past due);²⁴ (SOR ¶ 1.m.: a medical account that was \$64 past due);²⁵ (SOR ¶ 1.n.: a medical account that was \$21 past due);²⁶ (SOR ¶ 1.o.: a medical account that was \$46 past due);²⁷ (SOR ¶ 1.p.: a medical account that was \$22 past due);²⁸ (SOR ¶ 1.q.: a student loan account that was \$3,820 past due);²⁹ (SOR ¶ 1.r.: an apartment lease account with a remaining unpaid balance of \$1,866);³⁰ (SOR ¶ 1.s.: a bank checking account that was apparently overdrawn leaving \$413 past due);³¹ (SOR ¶ 1.t.: a medical account that was \$282 past due);³² (SOR ¶ 1.u.: a medical account that was

¹⁹ AE A, *supra* note 5.

²⁰ Item 6, *supra* note 14, at 6.

²¹ Item 6, *supra* note 14, at 7.

²² Item 6, *supra* note 14, at 8.

²³ Item 6, *supra* note 14, at 9.

²⁴ Item 6, *supra* note 14, at 9.

²⁵ Item 6, *supra* note 14, at 9.

²⁶ Item 6, *supra* note 14, at 10.

²⁷ Item 6, *supra* note 14, at 10.

²⁸ Item 6, *supra* note 14, at 10.

²⁹ Item 6, *supra* note 14, at 10.

³⁰ Item 6, *supra* note 14, at 3-4, 11.

³¹ Item 6, *supra* note 14, at 11; Item 7, *supra* note 9, at 15.

³² Item 6, *supra* note 14, at 11.

\$129 past due);³³ (SOR ¶ 1.v.: a medical account with a remaining unpaid balance of \$43);³⁴ (SOR ¶ 1.w.: a medical account with a remaining unpaid balance of \$43);³⁵ (SOR ¶ 1.x.: a cable television/Internet account that was \$186 past due);³⁶ (SOR ¶ 1.y.: a medical account with a remaining unpaid balance of \$244);³⁷ and (SOR ¶ 1.z.: a cash advance account for which a judgment was entered in the amount of \$456).³⁸

Among the accounts for which there was a simple comment that the account was a duplicate, but for which she failed to explain to which accounts the “duplicates” in a pool of duplicates referred, or offer any explanation or indication regarding them, were the following: (SOR ¶ 1.c.: an automobile loan for a vehicle that was repossessed in 2008, and for which a judgment was entered in 2011 for \$5,100);³⁹ (SOR ¶ 1.d.: an unspecified type of account (thought to be a settlement offer on an automobile) for which a judgment was entered in 2011 for \$4,850);⁴⁰ (SOR ¶ 1.h.: an automobile loan for a vehicle that was repossessed and charged off in the amount of \$1,885 in 2014);⁴¹ (SOR ¶ 1.i.: an automobile loan for a vehicle that was repossessed leaving a past-due balance of \$2,130);⁴² and (SOR ¶ 1.j.: an automobile loan for a vehicle that was voluntarily repossessed leaving a past-due balance of \$1,000 and a remaining unpaid balance of \$1,996).⁴³

There is one remaining account (SOR ¶ 1.b.) about which Applicant professed to have no knowledge.⁴⁴ The unspecified type of account is actually a judgment in the amount of \$848, which was filed in 2010.⁴⁵

Applicant offered no evidence that she had ever received any financial counseling on such issues as debt consolidation, budgeting, or repayment plans. Furthermore, it is not known what Applicant’s financial resources may be because she

³³ Item 6, *supra* note 14, at 11.

³⁴ Item 6, *supra* note 14, at 12.

³⁵ Item 6, *supra* note 14, at 12.

³⁶ Item 6, *supra* note 14, at 13.

³⁷ Item 6, *supra* note 14, at 14.

³⁸ Item 7, *supra* note 9, at 15.

³⁹ Item 6, *supra* note 14, at 4; Item 7, *supra* note 9, at 15.

⁴⁰ Item 6, *supra* note 14, at 4; Item 7, *supra* note 9, at 15.

⁴¹ Item 6, *supra* note 14, at 7. This account is the one that Applicant and the creditor/collection agent agreed to settle with a payment of \$213. See AE B, *supra* note 6.

⁴² Item 6, *supra* note 14, at 8.

⁴³ Item 6, *supra* note 14, at 9.

⁴⁴ Item 3 (Answer to the SOR, dated June 12, 2015), at 2.

⁴⁵ Item 6, *supra* note 14, at 4; Item 7, *supra* note 9, at 11-12.

did not submit a personal financial statement to indicate her net monthly income, her monthly household or debt expenses, or whether or not she has any funds remaining at the end of each month for discretionary use or savings. Applicant offered no evidence to indicate that her financial problems are now under control.

Personal Conduct

SOR ¶ 2.a. – On March 13, 2014,⁴⁶ 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 any judgment entered against her; if possessions or property were voluntarily or involuntarily repossessed; if she had bills or debts turned over to a collection agency; 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,⁴⁷ but the responses to those questions were, in fact, false for at that time Applicant had several accounts that fell within the stated parameters. On March 26, 2014, a security operations specialist indicated the e-QIP was being returned to Applicant for corrections to assure accuracy and completeness, and Applicant was given 48-hours in which to complete her corrections.⁴⁸ It remains unclear as to what corrections were required. Applicant stated that she had forgotten to add some information,⁴⁹ but she failed to identify the type of information about which she was concerned.

During her OPM interview, Applicant initially waited to make some of her corrections known, and after the questioning turned to Applicant’s unreported delinquencies at the conclusion of the interview, and she denied any additional delinquencies. Then, she was confronted with information developed indicating the presence of additional delinquent accounts.⁵⁰ She stated that “upon second thought,” there were “instances” of the types identified in the e-QIP.⁵¹ The scenario took a different turn when, in her Amended Answer to the SOR, Applicant claimed she did not have sufficient time to complete the e-QIP within the 48-hour window granted her.⁵² She contended that her supervisor advised her to say “no” and that the matter would be resolved when Applicant met with the OPM investigator.⁵³ Applicant offered no

⁴⁶ It should be noted that the SOR erroneously alleged that the e-QIP was completed by Applicant on February 4, 2013, whereas in fact, it was completed on March 13, 2014.

⁴⁷ e-QIP, *supra* note 1, at 35-36, 39.

⁴⁸ E-mail stream, various dates, attached to Item 5.

⁴⁹ E-mail, dated March 27, 2014, attached to Item 5.

⁵⁰ Item 7, *supra* note 9, at 11.

⁵¹ Item 7, *supra* note 9, at 8.

⁵² Item 4, *supra* note 3.

⁵³ Item 4, *supra* note 3.

corroborating documentation to support either her contentions pertaining to the purported advice that she had received, or the type of information that needed to be corrected. She offered no specific explanation for her failure to accurately complete Section 26 in light of the two opportunities she was afforded to do so.

SOR ¶ 2.b. – In February 2012, Applicant and her boyfriend were engaged in a verbal and physical dispute at their shared-residence and he had ordered her out. She filed an incident report with the police. She subsequently changed her story, and told the police the incident had never occurred. That summer, Applicant was informed by the police that she was being charged with falsely summoning or giving false reports to law-enforcement officials. On August 6, 2012, she turned herself in to the police and was arrested. In September 2012, Applicant entered a plea of guilty. Although the SOR also alleged that Applicant had been sentenced to six months in jail (suspended) and a fine of \$82, Applicant claimed she was released without fine or probation.⁵⁴ There is no evidence to contradict Applicant’s position regarding the sentence.

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.”⁵⁵ 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/II/III are classified as “sensitive positions.”⁵⁶ “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.”⁵⁷ 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.⁵⁸

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

⁵⁴ Item 7, *supra* note 9, at 6.

⁵⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵⁶ Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

⁵⁷ Regulation ¶ C6.1.1.1.

⁵⁸ Regulation ¶ C8.2.1.

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 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."⁵⁹ 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.⁶⁰

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.⁶¹ 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:

⁵⁹ "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).

⁶⁰ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁶¹ *Egan*, 484 U.S. at 531.

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

The guideline notes several conditions that could raise trustworthiness concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise trustworthiness concerns. In addition, trustworthiness concerns may be raised under AG ¶ 19(g), when there is "a failure to file annual Federal, state, or local income tax returns as required. . ." Applicant's accounts became delinquent and were placed for collection, charged off, sent to judgment, or resulted in repossession. She failed to timely file her federal and state income tax returns for 2013. AG ¶¶ 19(a), 19(c), and 19(g) 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." 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, 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."⁶² 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."

⁶² 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)).

AG ¶¶ 20(a), 20(b), 20(c), and 20(e) do not apply. AG ¶ 20(d) minimally applies. The nature, frequency, and recency of Applicant's continuing financial difficulties since 2008 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant failed to timely file her federal and state income tax returns for the tax year 2013, and she did not provide the reasons for such inaction. She also failed to express any reasons for some of her accounts becoming delinquent or for her conscious decisions to stop making her monthly payments for other accounts. For the vast majority of her delinquent accounts, Applicant offered no evidence of a good-faith effort to resolve them, and she essentially continues to ignore them. She has failed to pay or resolve accounts with balances as low as \$21, \$22, \$43, \$44, \$46, and \$64. There is one possible exception, and that pertains to a settlement offer made by one creditor in October 2015, but Applicant failed to submit any documentation to indicate that she had made any payments on the agreed settlement.

There are other accounts which Applicant claims are duplicates, but as noted above, she failed to explain to which accounts among a pool of accounts the duplicates referred, or offer any explanation or indication regarding them. Merely disputing certain accounts, or claiming that they are duplicates, without substantially more, and without any substantiating documentation, is not sufficient to prove those disputes.

There is no evidence to indicate that Applicant ever received financial counseling. It is not known what Applicant's financial resources may be, or if she has any funds remaining at the end of each month for discretionary use or savings. There is no evidence to reflect that Applicant's financial problems are under control. To the contrary, the overwhelming evidence leads to the conclusion that Applicant's financial problems are not under control. Applicant has not acted responsibly by failing to address her delinquent accounts and by making little, if any, efforts of working with her creditors.⁶³ Applicant's actions under the circumstances cast doubt on her current reliability, trustworthiness, and good judgment.⁶⁴

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 classified information. Of special interest is any failure to provide truthful

⁶³ "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.

⁶⁴ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes several conditions 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.

It is also potentially disqualifying under AG ¶ 16(b), by “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.”

On March 13, 2014, when Applicant completed her e-QIP, she responded to certain questions pertaining to her financial record. The questions in Section 26 asked if, in the past seven years, she had any judgment entered against her; if possessions or property were voluntarily or involuntarily repossessed; if she had bills or debts turned over to a collection agency; 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 responses to those questions were, in fact, false for at that time Applicant had several accounts that fell within the stated parameters.

Applicant’s responses provide sufficient evidence to examine if her submissions were deliberate falsifications, as alleged in the SOR, or merely the result of insufficient time to complete her answers along with purportedly erroneous guidance given to her by her supervisor. I have considered the somewhat limited available information pertaining to Applicant’s background in analyzing her actions. 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 Applicant’s intent or state of mind at the time the falsification or omission occurred.⁶⁵ In this instance, Applicant had two opportunities to complete her e-QIP, and she acknowledged that it was initially incomplete. However, after being afforded the second opportunity to make additions and corrections, she failed to make

⁶⁵ 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.

ISCR Case No. 03-10390 at 8 (App. Bd. Apr. 12, 2005) (citing ISCR Case No. 02-23133 (App. Bd. Jun. 9, 2004)).

some significant additions and corrections, simply claiming that she insufficient time and relied on her supervisor's erroneous guidance. Given the lengthy period of time Applicant's financial problems have been around, the large number of delinquent accounts, the repossessions, the judgment, as well as the garnishment of her salary, it stretches credulity to believe her explanations. While it is understandable that she might forget some of the accounts, she could not have possibly forgotten them all. Her correct answer should have been "yes" to the questions seeking information about her negative finances. Applicant's actions support the conclusion that her responses were deliberate falsifications and omissions. As it pertains to SOR ¶ 2.a., AG ¶ 16(a) has been established.

In February 2012, Applicant and her boyfriend were engaged in a verbal and physical dispute and she filed an incident report with the police. She subsequently changed her story, and told the police the incident had never occurred. As a result of her changed story, Applicant was charged with falsely summoning or giving false reports to law-enforcement officials. In September 2012, Applicant entered a plea of guilty. While there remains some question as to the sentence received, there is no dispute that Applicant deliberately provided false or misleading information to the police. Accordingly, as it pertains to SOR ¶ 2.b., AG ¶ 16(b) has been established.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from personal conduct. If "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," AG ¶ 17(a) may apply. Also, AG ¶ 17(b) may apply if "the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully."

AG ¶¶ 17(a) and 17(b) do not apply. Applicant's 2012 falsification to the police and her 2013 falsifications and omissions on her e-QIP to support a conclusion that Applicant has a proclivity for something less than the truth. As it pertains to SOR ¶ 2.a., Applicant failed to make prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts. During her OPM interview, Applicant initially waited to make some of her corrections known, and after the questioning turned to Applicant's unreported delinquencies at the conclusion of the interview, and she denied any additional delinquencies, she was confronted with information developed indicating the presence of additional delinquent accounts. She stated that "upon second thought," there were "instances" of the types identified in the e-QIP.

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 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.⁶⁶

There is some evidence in favor of mitigating Applicant's conduct. She has been a full-time data entry clerk since August 2013. Unfortunately, she failed to submit any evidence of her job performance.

The disqualifying evidence is more substantial and compelling. Applicant failed to timely file her federal and state income tax returns for 2013. Although Applicant repeatedly declared her intentions of bringing her delinquent accounts current and resolving them, to date, she has failed to do so. Instead, she has seemingly continued to ignore even the smallest of those delinquent accounts. She offered no evidence of: any continuing contacts with her creditors; financial counseling; repayment plans; payments to creditors; a budget; a personal financial statement to indicate any availability of discretionary funds each month; and of her reputation for reliability, trustworthiness, and good judgment. Although she contended that some of the accounts are duplicates of other accounts, she failed to specify which accounts duplicated which accounts, except by generally referring to a pool of accounts. Applicant's inaction with regard to her finances, as well as her submissions of false information in 2012 and 2013, cast doubt on her current reliability, trustworthiness, and good judgment. Considering the absence of confirmed debt resolution and elimination efforts, Applicant's financial issues are likely to remain.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁶⁷

⁶⁶ 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).

⁶⁷ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 essentially negative track record of debt reduction and elimination efforts, generally ignoring her delinquent debts. In addition, her personal conduct issues, which arose when she falsely reported no delinquent debts when, in fact, she had significant debts, as well as her false police report, continue to be of significance. Overall, the evidence leaves me with substantial questions and doubts as to Applicant’s eligibility and suitability for a position of public trust. For all of these reasons, I conclude Applicant has failed to mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.z.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a. and 2.b.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility to occupy a public trust position to support a contract with DOD. Eligibility is denied.

ROBERT ROBINSON GALES
Administrative Judge