



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 13-00828

Appearances

For Government: Christopher Morin, Esquire, Department Counsel

For Applicant: *Pro se*

12/09/2014

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On October 18, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On July 8, 2013, the Department of Defense (DOD) Consolidated Adjudications Facility Industry Division (CAF) issued him a set of interrogatories. He responded to the interrogatories on July 25, 2013.² On February 26, 2014, the DOD CAF issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified

¹ GE 1 ((SF 86), dated October 18, 2012).

² GE 2 (Applicant's Answers to Interrogatories, dated July 25, 2013).

(Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline E (Personal Conduct) and Guideline F (Financial Considerations), and it 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. In one undated and unsigned statement, Applicant responded as follows:³

Due to a current litigation matter, I am unable to respond to that specific question. I agreed not to disclose any information at this time concerning the matter and was instructed to reply in the negative should questions arise.

In two separate sworn statements, dated May 3, 2014, and August 29, 2014, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On August 20, 2014, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on August 21, 2014. A Notice of Hearing was issued on August 27, 2014, and I convened the hearing, as scheduled, on September 17, 2014.

During the hearing, five Government exhibits (GE 1 through GE 5) and six Applicant exhibits (AE A through AE F) were admitted into evidence without objection. Applicant and two other witnesses testified. The transcript (Tr.) was received on September 30, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and he submitted a number of additional exhibits (AE G through AE R) that were admitted into evidence, some over the objections of Department Counsel and some without objection.⁴

Findings of Fact

In his Answers to the SOR, Applicant eventually admitted a portion of one of the factual allegations pertaining to personal conduct (§ 1.a.) as well as one of the factual allegations pertaining to financial considerations (§ 2.a.). He denied the remaining allegations or portions thereof. 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:

³ Applicant's First Answer to the SOR, undated.

⁴ Department Counsel objected to AE G and AE L on the grounds of relevance because they pertained to disciplinary actions taken by Applicant's employer against other employees, and because Applicant was attempting to show that there was no consistency as to the crime and the punishment within the employer's system of justice. I rule that the exhibits are relevant, but will be given limited weight. Accordingly, the objections are overruled.

Applicant is a 50-year-old employee of a defense contractor who, since October 2012, has served in an unspecified part-time position pending receipt of a security clearance.⁵ He has never served with the U.S. military.⁶ Applicant was employed by another government agency (AGA) from October 1986 until he retired in June 2012.⁷ He had held a top secret security clearance with access to sensitive compartmented information (SCI), with a polygraph, since October 1986.⁸ For reasons discussed further below, that security clearance and SCI access were suspended in March 2012.

A 1982 high school graduate, Applicant obtained a bachelor's of science degree in business administration in 1985.⁹ He was married in 1989, and has two daughters born in 1990 and 1994 as well as a stepdaughter born in 1985.¹⁰

Personal Conduct

(SOR ¶¶ 1.e. and 2.c.): In March 2001, while performing surveillance duties for AGA, Applicant used his government-issued credit card for a number of personal, non-official or non-business-related, purchases. His actions were not known to his superiors until Applicant and several other colleagues were reported by an individual who was in the process of leaving the AGA. The allegation was investigated, and it was determined that Applicant had misused his government credit card. He was suspended for three days and placed on probation for six months. Applicant did not disclose his suspension to his wife.¹¹

(SOR ¶¶ 1.a. and 2.b.): Ten years later, this time while performing covert surveillance duties for AGA, Applicant used his government-issued credit card for official business expenses and, because he was "under severe financial stress," he also repeatedly used the card for personal, non-official or non-business-related, purchases in violation of the AGA Confidential Funding Policy Implementation Guide and AGA division instructions.¹² The allegation was investigated by the AGA. Applicant's government credit card transactions for the period 2007 through October 2011 were scrutinized. Applicant admitted the credit card misuse, and it was determined that he had made the following unauthorized personal transactions: 2007: 7; 2008: 26; 2009: 70; 2010: 72; and 2011: 48, for a total of 223 such transactions.¹³ Applicant

⁵ GE 1, *supra* note 1, at 10-11; GE 2 (Personal Subject Interview, dated January 16, 2013), at 3.

⁶ GE 1, *supra* note 1, at 14.

⁷ GE 1, *supra* note 1, at 12-13.

⁸ GE 1, *supra* note 1, at 29-30.

⁹ GE 2 (Personal Subject Interview), *supra* note 5, at 3; GE 2 (College Transcript, dated March 14, 1988).

¹⁰ GE 1, *supra* note 1, at 17, 21-22; Tr. at 42-43.

¹¹ GE 5 (Report of Investigation, dated December 19, 2012), at 2; Tr. at 48-49, 57-58.

¹² AE J (Report of Investigation, dated September 1, 2011); Tr. at 59.

¹³ AE P (Report of Investigation, dated November 4, 2011).

characterized his misuse as “very minimal,” and referred to his broken lawnmower, and his wife acknowledged he had used the card for household items because they were “financially strapped.”¹⁴ It was determined that Applicant had a balance of \$9,294.87, which he eventually paid off.¹⁵

During that AGA investigation, Applicant purportedly admitted that he had routinely withheld his government credit card statements from review by the appropriate AGA authority, in essence to conceal his credit card misuse.¹⁶ However, in his August 2014 Answer to the SOR, Applicant modified his position and contended “there is conflicted information concerning that in current litigation.”¹⁷ Following the hearing, he seemingly avoided addressing the withholding of the credit card statements and contended the post office box to which the statements were to be mailed had been relocated several times.¹⁸

In March 2012, the investigation into Applicant’s misuse of his government credit card was completed and Applicant’s security clearance was suspended. He was also suspended from work, pending a hearing with the assistant director of the AGA.¹⁹ The Office of Professional Responsibility (OPR) found that Applicant had violated the following established offense codes: 2.5, Lack of Candor/Lying – No Oath; 3.7, Misuse of Government Credit Card (Theft) – Gasoline or Automobile-Related Expenses; and 3.8, Misuse of Government Charge Card – Personal Use. On June 1, 2012, Applicant was removed/dismissed from his employment with the AGA.²⁰ He appealed the OPR findings and decision to a Disciplinary Review Board (DRB), and the DRB voted to vacate the substantiation of offense code 3.7, as well as affirm the substantiation of offense codes 2.5 and 3.8, along with Applicant’s dismissal.²¹ Applicant disputed the allegations; the evidence used against him, the fairness of the process, especially when some of his desired exculpatory evidence was shredded by the AGA; and the unfair disparity of punishment given to other employees for similar or more serious misconduct. He subsequently filed an Equal Employment Opportunity Commission (EEOC) complaint.²²

¹⁴ Tr. at 39-40.

¹⁵ AE J, *supra* note 12, at 1; GE 2 (Personal Subject Interview), *supra* note 5, at 1; Tr. at 60.

¹⁶ AE J, *supra* note 12, at 1; AE B (Statement, dated November 21, 2011), at 2-3.

¹⁷ Applicant’s Answer to the SOR, dated August 29, 2014, at 2.

¹⁸ AE O (E-mail, dated September 24, 2014), at 1.

¹⁹ GE 2 (Personal Subject Interview), *supra* note 5, at 1.

²⁰ GE 5, *supra* note 11; AE I (Letter, dated January 31, 2013), at 1.

²¹ AE I, *supra* note 20, at 1-2.

²² AE I (E-mail, dated February 7, 2013); AE G (Extract of Decisions, dated February 21, 2012); AE K (Extract of Potential Punishment, dated January 15, 2012); AE L (Comparison Chart, undated); AE M (Newspaper Article, dated April 9, 2008); AE N (Internet Article, dated February 28, 2013); AE R (Newspaper Article, dated February 5, 1993); Tr. at 72-73.

(SOR ¶ 1.b.): On October 18, 2012, when Applicant completed his SF 86, he responded to questions pertaining to his employment activities. The questions in Section 13A asked his reason for leaving the employment activity identified as the AGA, and if he had, in the last seven years, been fired. Applicant answered the first question with the entry “separated, under current on-going appeal,” and the second question with “no.”²³ He certified that the responses were “true, complete, and correct” to the best of his knowledge and belief. His response to the first question was technically correct, and he would not be appealing the action if the separation was not adverse. The response to the second question was both incomplete and false for Applicant concealed his June 2012 removal/dismissal for Lack of Candor/Lying – No Oath; and Misuse of Government Charge Card – Personal Use. In his August 2014 Answer to the SOR, Applicant denied intending to conceal the truth about his leaving the AGA. He wrote:²⁴

I answered honestly in that I was separated, pending a current on-going appeal. The next question asked if I had been fired and I answered “No” under the advice (sic) of my attorney at the time, and my situation was still under appeal within the [AGA]’s disciplinary system. My attorney strongly felt I would not be removed and it would be better to wait for the outcome of the case rather than prejudice myself for future employment by making an admission without a definitive answer.

(SOR ¶ 1.c.): In that same SF 86, Applicant responded to another question pertaining to his financial record. The question in Section 26 – Financial Record (Employer Travel or Credit Card) asked if, in the last seven years, he had been counseled, warned, or disciplined for violating the terms of agreement for a travel or credit card provided by his employer. Applicant answered “no” to the question. He certified that the response was “true, complete, and correct” to the best of his knowledge and belief, but the response to that question was, in fact, false for Applicant had been disciplined and removed/dismissed from his employment with the AGA for his government credit card misuse. Applicant subsequently furnished the same narrative that he gave for his other responses regarding his reasons for answering as he did.²⁵ He denied attempting to mislead anyone, but acknowledged that, in retrospect, he “probably” should have answered “yes” when answering the question.²⁶

(SOR ¶ 1.d.): Other questions in Section 26 – Financial Record (Delinquency Involving Routine Accounts) asked if, in the last seven years, he had bills or debts turned over to a collection agency; been over 120 days delinquent on any debt not previously entered, and if he was currently over 120 days delinquent on any debt. Applicant answered “no” to both of those questions. He certified that the response was “true, complete, and correct” to the best of his knowledge and belief, but the response to

²³ GE 1, *supra* note 1, at 13.

²⁴ Applicant’s Answer to the SOR, dated August 29, 2014, at 2; *See also* Tr. at 65.

²⁵ Applicant’s Answer to the SOR, *supra* note 24, at 2; Tr. at 66-67.

²⁶ Tr. at 66-70.

those questions was, in fact, false for Applicant had concealed multiple accounts that were either placed for collection or were over 120 days delinquent that were listed in his October 2012 credit report.²⁷ He subsequently admitted having accounts in collection, but denied that he had “ever intentionally or with malice tried to mislead the recipients of the [SF 86].”²⁸

Financial Considerations

Applicant contends there apparently was nothing unusual about his finances until he was suspended from his job by the AGA in March 2012. At about the same time, his wife became ill and was unable to work, and she claimed she was later unable to find a new job. Because they had continuing financial obligations, including the costs of sending their children to college, he cashed out some of his retirement to resolve the majority of his “credit problems.”²⁹ However, his rendition of his initial financial difficulties is at odds with the established facts. Applicant acknowledged that he had been “under severe financial stress” even before he was suspended from his job, and he offered that stress as the explanation for his misuse of his government credit card during the period 2007 through October 2011. His wife acknowledged that they were financially strapped even before he was suspended. Applicant’s October 2012 credit report reflects some delinquencies in 2005 and 2006, as well as significant delinquencies during 2011.³⁰ While Applicant contended in January 2013 that he had resolved, either by settling for a reduced amount or paying off in full several of his delinquent accounts,³¹ his August 2014 credit report reflects a number of accounts that had been charged off with no payments.³²

(SOR ¶ 2.a.): The SOR identified only one purportedly continuing delinquency. When Applicant was transferred from one duty location to another duty location in 2010, he was referred to a specific realty relocation network to market and sell his residence. It was during this time that the housing market fell apart.³³ One aspect of the program was the existence of a guaranteed buyout offer. According to that program:³⁴

Your home must be listed for 30 days before the appraisals can be ordered (we must also receive your signed homeowner disclosures before

²⁷ GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated October 24, 2012), at 5-11, 14-16; GE 2 (Personal Subject Interview), *supra* note 5, at 1-3; Tr. at 71-72.

²⁸ Applicant’s Answer to the SOR, *supra* note 24, at 2; Tr. at 71.

²⁹ GE 2 (Personal Subject Interview), *supra* note 5, at 1.

³⁰ GE 3, *supra* note 27, at 5-10, 14-15.

³¹ GE 2 (Personal Subject Interview), *supra* note 5, at 1-3.

³² GE 4 (Equifax Credit Report, dated August 19, 2014), at 1-3.

³³ Tr. at 39.

³⁴ AE H (E-mail, dated February 5, 2010), at 2.

we can order). I'll send a list of appraisers to choose from. From your selection, we'll order 2 appraisers to contact you to schedule an appointment for a relocation appraisal on your property. Please note that relocation appraisals are very different from a typical mortgage appraisal. The suggested sales price is going to be forecasted out for 120 days. Once both appraisal reports are sent to me (this process can take up to 30 working days, about 6 weeks) the average of the 2 will be your guaranteed buyout offer. The [AGA] relocation policy requires your current listing to be within 105% of the buyout offer within 10 days. You continue to market your home for an additional 30 days before accepting your offer. The guaranteed buyout offer will expire 60 days from the day I offer it to you. Please note the guaranteed buyout offer is meant as a safety net. You will get MORE money if you sell your home to a 3rd party buyer.

Applicant offered no evidence to indicate that the provisions of the guaranteed buyout program had been satisfied. Instead, he contended that the house appraised for less than it was worth, and since the residence could not be sold on the open market, the realty relocation company made an offer of \$293,000, which was \$37,000 less than he still owed on the mortgage. The realty relocation company withdrew its offer, and in May 2010, the residence was sold as a short sale for \$269,900, resulting in a \$69,000 loss for Applicant.³⁵

A private mortgage insurance (PMI) company subsequently activated collection efforts for a \$10,000 promissory note, requesting that monthly payments of \$83.33 be submitted.³⁶ Applicant contends the \$10,000 should have been satisfied at closing. He submitted documentation to support one payment of \$21.19 in July 2013.³⁷ The collection agent filed a civil action against Applicant and the matter appears to be unresolved.³⁸ The matter is also seemingly included in a larger class-action lawsuit alleging that the mortgage lender wrongfully required consumers to purchase PMI in connection with the purchase of the residence.³⁹ It is unclear what the current status of the two lawsuits might be.

In July 2013, Applicant completed a personal financial statement in which he indicated a monthly family net income of \$3,381; and monthly expenses of \$1,816. With no significant debts, he has a net remainder of \$1,565, available for discretionary

³⁵ AE C (Statement, undated); Tr. at 74.

³⁶ AE C (Letter, dated January 27, 2012); GE 3, *supra* note 27, at 11.

³⁷ Applicant's Answer to the SOR, *supra* note 24, at 3; GE 2, *supra* note 2, at 10, 17.

³⁸ AE C (Court Documents, various dates).

³⁹ AE C (News Stories, various dates); Tr. at 45-47.

spending or savings.⁴⁰ His assets include bank savings (approximately \$4,000), and stocks and bonds (approximately \$13,000).⁴¹

Work Performance and Character References

During his nearly 26 years with the AGA, Applicant completed 325.25 hours of training and received a number of certificates of appreciation, achievement, superior service, and exceptional performance.⁴² Several former coworkers from the AGA have characterized him in glowing terms. He was described as conscientious, dedicated, efficient, effective, ethical, well-respected by coworkers, trustworthy, very focused, honest, compassionate, and possessing integrity.⁴³

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.”⁴⁴ 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.”⁴⁵

When evaluating an applicant’s suitability for a security clearance, 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 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

⁴⁰ GE 2 (Personal Financial Statement, undated).

⁴¹ GE 2 (Personal Financial Statement), *supra* note 41.

⁴² AE D (Certificates, various dates).

⁴³ AE A (Character References, various dates); Tr. at 30-37.

⁴⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴⁵ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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.”⁴⁶ 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.⁴⁷

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.”⁴⁸

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.”⁴⁹ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

⁴⁶ “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).

⁴⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴⁸ *Egan*, 484 U.S. at 531

⁴⁹ See Exec. Or. 10865 § 7.

Analysis

Guideline E, Personal Conduct

The security 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 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 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

It is also potentially disqualifying under AG ¶ 16(d), if there is:

credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information; . . . (3) a pattern of dishonesty or rule violations; (4) evidence of significant misuse of Government or other employer's time or resources.

As noted above, as early as 2001, Applicant violated the AGA Confidential Funding Policy Implementation Guide and the AGA division instructions when he misused his government-issued credit card for a number of personal, non-official or non-business-related, purchases. He was subsequently disciplined. Nevertheless, during the period 2007 through 2011, he again misused the credit card on 223 additional occasions. The deterrence effectiveness of the discipline administered to him following the 2001 incidents proved to be inadequate to change his behavior. It is the extensive, repeated, and routine misuse of the card that constituted untrustworthy or

unreliable behavior, a pattern of dishonesty or rule violations, and evidence of significant misuse of the AGA's resources. AG ¶ 16(d) has been established.

Applicant has placed significant emphasis on the disciplinary actions taken by the AGA against other employees in an attempt to show that there was no consistency as to the offense and the punishment within the AGA's system of justice, and that he should have been given lesser punishment. While his concern is understandable, this is not the proper forum for such a grievance. In this instance, the issue is not the degree of discipline received, but rather the nature of his conduct. Moreover, a security clearance proceeding is not a disciplinary proceeding.

On October 18, 2012, when Applicant completed his SF 86, he responded to questions pertaining to his employment activities and the misuse of his employer credit card. The questions asked his reason for leaving the employment activity identified as the AGA, and if he had, in the last seven years, been fired or counseled, warned, or disciplined for violating the terms of agreement for a travel or credit card provided by his employer. Applicant answered the first question with the entry "separated, under current on-going appeal," and the other questions with "no." He certified that the responses were "true, complete, and correct" to the best of his knowledge and belief, but the responses to those questions were, in fact, both incomplete and false for Applicant concealed his June 2012 removal/dismissal for Lack of Candor/Lying – No Oath; and Misuse of Government Charge Card – Personal Use. In addition, when asked asked if, in the last seven years, he had bills or debts turned over to a collection agency, or been over 120 days delinquent on any debt not previously entered, Applicant answered "no" to both of those questions. He certified that the response was "true, complete, and correct" to the best of his knowledge and belief, but the response to those questions was, in fact, false for Applicant had concealed multiple accounts that were either placed for collection or were over 120 days delinquent. His position is unreasonable and not credible. AG ¶ 16(a) has been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct, but none of those mitigating conditions apply. His conduct shows a lack of honesty and integrity. It is also recent and serious.

Guideline F, Financial Considerations

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

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise 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 security 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 security concerns. In addition, *deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional breaches of trust* is potentially disqualifying under AG ¶ 19(d).

Applicant misused his government-issued credit card for a number of personal, non-official or non-business-related, purchases in 2001, as well as during the period 2007 through 2011, when he did so again on 223 additional occasions. He also has been experiencing problems with a PMI account which is in collection, and in ongoing litigation. AG ¶¶ 19(a), 19(c), and 19(d) apply.

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*.⁵⁰ It is also potentially mitigating under AG ¶ 20(e) where *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*.

AG ¶¶ 20(c), 20(d) and 20(e) apply. AG ¶¶ 20(a) and 20(b) both partially apply. The nature, frequency, and relative recency of Applicant's financial difficulties between 2005 and 2013 make it difficult to conclude that it occurred "so long ago" or "was so

⁵⁰ 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)).

infrequent,” especially since they appear to have continued until relatively recently. Applicant attributed his financial problems to a variety of circumstances that he claimed were largely beyond his control. Those circumstances included the job-related relocation, the failure of the guaranteed buyout program, his wife becoming ill and unable to work, and the costs of sending children to college. He failed to explain in detail how those circumstances negatively impacted his ability to maintain his monthly payments or how they justified his misuse of his government credit card. While his financial problems may have, in some measure, been beyond Applicant’s control, it remains unclear as to what degree they were. Nevertheless, under the circumstances, while Applicant acted irresponsibly over a substantial period, ending in 2011, by misusing his government credit card, he eventually acted responsibly by addressing his delinquent accounts rather than avoiding them.⁵¹

While there is no evidence that Applicant ever received financial counseling, there are clear indications that his financial problem is being resolved or is under control. He has only one SOR-related delinquent account, and it is currently disputed by him and in litigation, and he has a monthly net remainder of \$1,565 available for discretionary spending or savings. Applicant’s misuse of his government credit card assisted him in initially resolving delinquent accounts, but he appears to have turned his efforts to more positive good-faith efforts to repay overdue creditors or otherwise resolve his debts. Applicant’s misuse of his government credit card ceased in 2011, and his subsequent actions under the circumstances confronting him no longer cast doubt on his current reliability, trustworthiness, or good judgment.⁵²

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 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.

⁵¹ “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.

⁵² See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. 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.⁵³

There is some evidence in favor of mitigating Applicant's conduct. He is a caring husband and father. With the exception of his misuse of his government credit card, his previous professional career with the AGA was outstanding. He has addressed his financial issues, and is currently involved in litigation to resolve the one remaining delinquent account.

The disqualifying evidence under the whole-person concept is more substantial, for this is more than simply a case with personal conduct and financial issues. Applicant misused his government credit card on an unspecified number of occasions in 2001 and again on 223 occasions from 2007 through 2011. When he completed his SF 86, he responded to several questions and certified that the responses were "true, complete, and correct" to the best of his knowledge, but the responses to those questions were, in fact, false or incomplete. He denied the responses were deliberate or an attempt to falsify the material facts, and attributed his actions to advice he supposedly had received from an attorney. He is an intelligent, talented, and experienced individual, but his explanations are unreasonable and not credible. Accordingly, I have concluded that he deliberately falsified his responses in an attempt to conceal the truth about his personal conduct involving his misuse of his government credit card, his employment termination, and his delinquent accounts. 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 mitigated the security concerns arising from his financial considerations, but has failed to mitigate the personal conduct issues. 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 E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant

⁵³ 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).

Paragraph 2, Guideline F:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

Subparagraph 2.b:

For Applicant

Subparagraph 2.c:

For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge