



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



In the matter of:)
)
) ISCR Case No. 14-02833
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: Carol A. Phinney, Esq.

03/29/2016

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not file timely federal or state income tax returns for several tax years. In 2010 and 2011, Applicant used an employer-sponsored credit card without authorization for personal purchases, including to aid a woman whom he suspected used some of his financial support for illegal drugs. Although Applicant paid his unauthorized credit charges, filed some of his delinquent returns, and is no longer associated with the woman whom he aided, financial and personal conduct concerns persist. Clearance is denied.

Statement of the Case

On October 9, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security*

Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

On November 6, 2014, Applicant answered the SOR allegations, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On June 8, 2015, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for him. On October 27, 2015, I scheduled a hearing for November 19, 2015.

I convened the hearing as scheduled. Before the introduction of any evidence, I amended ¶ 1.c of the SOR without objection to correct a typographical error in the date, from 2001 to 2011. One Government exhibit (GE 1) was admitted into evidence without objection. The letter forwarding discovery of the Government's case to Applicant was incorporated in the record as a hearing exhibit (HE 1) but not admitted as evidence. Applicant offered as an exhibit (AE A) his personnel background report of investigation (ROI) for character reference testimony. I sustained the Government's objections on hearsay and the DOD Directive ¶ E3.1.20, which requires witness authentication for ROIs. However, I held the record open for one month after the hearing in part for Applicant to submit character reference affidavits. Applicant testified at his hearing, as reflected in a transcript (Tr.) received on December 3, 2015.

On December 17, 2015, Applicant submitted three affidavits from character references (AEs B-D). On December 18, 2015, he forwarded additional character reference evidence (AEs E and F). Department Counsel filed no objections by the January 2016 deadlines for comment, and AEs B through F were admitted as full exhibits.

Summary of SOR Allegations

The amended SOR alleges under Guideline F that Applicant failed to timely file federal or state income tax returns for tax years 2006 through 2012 (SOR ¶ 1.a) and that, as of October 9, 2014, he had yet to file his federal and state income tax returns for 2011 and 2012 (SOR ¶ 1.b). Additionally, Applicant is alleged to have misused his company credit card in or about 2011 for personal purchases totaling approximately \$28,000 (SOR ¶ 1.c) and to have provided financial support between February 2010 and November 2011 to a person for the purpose of purchasing illegal drugs (SOR ¶ 1.d). The SOR alleges under Guideline E that Applicant maintains a close personal relationship with someone who uses illegal substances and participates in criminal activity (SOR ¶ 2.a). Applicant's failure to file his income tax returns for 2011 and 2012 and his misuse of his company credit card were cross-alleged under Guideline E (SOR ¶ 2.b).¹

When he answered the SOR, Applicant admitted that he had not filed timely income tax returns for the years alleged, but he indicated that his tax withholdings were sufficient and no taxes were owed. While he acknowledged that he had yet to file his returns for

¹ SOR ¶ 2.b. should read, "That information set forth in subparagraphs 1.b and 1.c., above." There is no indication that Applicant was confused about what conduct was allegedly of concern under both guidelines F and E.

2011 and 2012, he expected to file them soon. Concerning the alleged misuse of his company-sponsored credit card, he admitted that he had used the credit card for non-business purchases during 2010 and 2011 to assist someone else and not for his personal use. Accrued charges of \$28,000 were paid, and he had no intent to deceive his employer in any way. While he did not deny providing financial support to that person between February 2010 and November 2011, he maintained that it was for housing, food, and transportation and not for drugs. Applicant indicated in response to SOR ¶ 2.a that he has not seen the person since 2011, and as far as he knew, the person was no longer using illegal drugs.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 71-year-old computer software engineer, who has worked for the same defense constructor since September 1984. He has a master's degree, which was awarded in June 1976. Applicant was granted a DOD secret clearance following a background investigation completed in February 1997. Applicant works within a controlled area and he was granted eligibility for access to sensitive compartmented information (SCI) in July 2008. (GE 1; Tr. 21-22.)

Applicant did not file his federal or state income tax returns for tax years 2006 through 2012 when they were due because he could not get his paperwork together in time. He experienced stress, particularly after a close friend took his own life in 2008. Applicant had federal and state taxes withheld each year, which he maintains were more than sufficient to cover his tax liabilities. (GE 1; Tr. 27.)

Around December 2009, the state tax authority filed a levy against his assets. The state had no information about any of his investment losses and assessed Applicant as owing taxes until he could prove otherwise. (Tr. 62.) Applicant apparently could not cash a check because of the levy on his account. (Tr. 45.) Applicant retained professional assistance to file his delinquent tax returns. The levy was lifted a couple of months later. (Tr. 46.) Applicant filed his federal and state income tax returns for 2006 around January 2010, for 2007 around February 2010, for 2008 around April 2010, and for 2009 around January 2011.² (GE 1.)

Between February 2010 and November 2011, Applicant began to spend time with a young woman, whom he had met briefly in early 2009. (Tr. 52-53.) She abused OxyContin and later heroin. Wanting to help her overcome her addiction, Applicant gave her money for food and transportation. He also assisted her with rides to work. About two to three times a week from February 2010 to April 2010, they stopped in route to her work so that

² Applicant provided no corroboration for his claim that he has filed his delinquent returns. His candor on other issues, including his involvement with the drug addict and the fact that his returns for 2010 through 2014 had not been filed as of the close of the evidentiary record, allow me to find as credible that his returns for 2006 through 2009 have been filed.

she could buy drugs illegally. Applicant gave her money on occasion strongly suspecting that it would be used for drug purchases, although he did not give her money immediately before she made a drug purchase. (Tr. 56-57.) In April 2010, she entered a rehabilitation program for her substance abuse. After she was discharged in May 2010, she claimed she was “clean,” although Applicant suspected that she started abusing heroin around September 2010. With Applicant’s encouragement, she entered a methadone program in January 2011. (GE 1; Tr. 54-55.) Applicant continued on occasion to give the woman rides to work and to the methadone clinic until November 2011. At times, they stopped in route for her to buy street drugs. She had led Applicant to understand that her treatment entailed a gradual reduction in her street drug use as her methadone levels gradually increased, so she needed to purchase street drugs until she was able to cease all illegal drug use. (GE 1; Tr. 57-58.) Applicant believes the young woman stopped abusing drugs in December 2011, but he has had no contact with her since November 2011. (GE 1; Tr. 59-60.) Applicant considered her an acquaintance, albeit someone in whom he was invested in helping her overcome her drug problem. (Tr. 60.)

Applicant used his employer-sponsored credit card without authorization in 2010 and 2011 largely to pay for transportation for his female friend. He rented a car for her at least twice for a month or two each time using the card. He paid a \$300 towing charge with the card as well. He first used the credit card to pay a \$400 to \$500 fee for a tax professional to assist him in resolving his tax issues. (Tr. 45-49, 52.) Unauthorized charges and fees for late payments totaled approximately \$28,644. (GE 1; Tr. 50-51.) Applicant was billed directly for the charges, which he paid, and he did not seek reimbursement from his employer. However, he was a month or so late at times in paying the charges. His card was cancelled for using it for non-business purposes. (GE 1; Tr. 36.) Applicant does not currently have an employer-sponsored credit card. (Tr. 36.)

On May 1, 2013, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (QNSP). Applicant responded affirmatively to whether he has been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any drug or controlled substance in the last seven years. He provided details about his assistance from February 2010 to November 2011 for a “friend” with a drug problem, including help with her transportation. Applicant indicated that on the way to her work, they stopped on occasion for her to make a drug purchase. Applicant also answered “Yes” to a financial record inquiry concerning whether in the past seven years he had failed to file or pay Federal, state, or other taxes when required by law or ordinance. He admitted that he filed late federal and state income tax returns for tax years 2006 through 2009, and that a tax professional was working on filing his delinquent federal and state returns for tax years 2010 through 2012. Applicant listed federal and state taxes at issue totaling \$28,000 for 2006, \$31,000 for 2007, \$31,600 for 2008, \$32,000 for 2009, \$32,200 for 2010, \$32,200 for 2011, and \$30,500 for 2012. However, he also indicated that his tax withholdings were more than sufficient to cover the taxes owed for each year. He was entitled to annual federal refunds of \$1,000 or more and state refunds around \$100. In response to whether he had been counseled, warned, or disciplined in the last seven years for violating the terms of agreement for a travel or credit card provided by his employer, Applicant disclosed his

unauthorized use of his employer-sponsored credit card in the total amount of \$28,644, for which he was disciplined in November 2011. As for any delinquency involving routine accounts, Applicant indicated that he allowed his phone bill to go unpaid for 4.5 months for \$456 before he paid it in December 2011. Additionally, he has been delinquent at times on his electric bill and on some dentist bills. (GE 1.)

As of November 2014, Applicant had filed his federal and state income tax returns for tax year 2010. He expected his 2011 tax returns to be filed soon. At his security clearance hearing in November 2015, Applicant admitted that he had yet to file his federal and state tax returns for tax years 2012 through 2014. He gave his paperwork for 2012 to his tax preparer in early November 2015. He was still in the process of gathering his paperwork, including year-end stock information, for 2013 and 2014. (Tr. 41-44.) Applicant believes that he would have been entitled to refunds for those years as well, had he filed his returns on time. (Tr. 28-29.)

Applicant understands that he made “a major mistake” in his support for the young drug-addicted woman. He has no intent of renewing his acquaintance with her. (Tr. 25-26.)

Character references

Three co-workers provided character references on Applicant’s behalf. A co-worker for the last 20 years, who benefitted from Applicant’s mentoring, was made aware of the SOR concerns by Applicant. This co-worker considers Applicant to be an “exceptionally good-natured person with recurring pattern of overwhelming desire to help those around him.” Applicant is known for organizing fundraising for local homeless shelters. This co-worker supports these charitable efforts partly to repay the investment Applicant made in him. Given Applicant made some “stupid decisions” with regard to helping the drug-abusing young woman, this co-worker agreed to author a character reference only if Applicant took steps to deal with the grief and loss over the death of Applicant’s close friend. This co-worker believes it led to Applicant’s inertia over his taxes and his desire to help people even to his own detriment. Applicant made an appointment with his company’s employee assistance program for help in finding a long-term therapist. Knowing this, the co-worker opined that Applicant does not pose a risk to national security. He believes Applicant “learned some very hard lessons and can be trusted not to make the same mistakes again.” (AE F.)

A project leader familiar with Applicant’s work since 1996 attests to Applicant having a good reputation at work. Applicant has shown himself to be knowledgeable, helpful, and respected. This project leader is unaware of any incidents involving the misuse of an employer-sponsored credit card by Applicant. He has no knowledge of any financial issues or illegal drug use involving Applicant. (AE B.) Likewise, an engineer who has worked with Applicant on a daily basis since June 2009, describes Applicant as “a brilliant and detailed driven engineer.” He too knows nothing about Applicant’s misuse of an employer-sponsored credit card. (AE C.) These co-workers are of the opinion that Applicant should retain his security clearance. (AEs B, C.)

Two of Applicant's friends provided character references for him. A friend from college, with whom he stays in contact by telephone, indicates that Applicant is hard-working and honest. She believes him to be financially responsible and knows of no illegal drug involvement by Applicant. (AE D.) Applicant has maintained a local friendship since 1993 with someone with whom he dines once a week. They attend music concerts together on occasion. This friend is aware that Applicant had some income tax problems in 2009 involving administrative filing issues. He also knows that Applicant would drive a young woman with a drug problem to her methadone clinic when she had car problems. He added that he knew of nothing in Applicant's history or character that would place him in a position to be blackmailed, coerced, or placed under duress. (AE E.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential,

rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concerns for financial considerations are articulated 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.

Applicant failed to file timely income tax returns for tax years 2006 through 2012 as alleged in SOR ¶ 1.a. There is no dispute on the issue of whether he met the minimum income threshold required to file income tax returns for those years. He explained on his QNSP that he could not get his paperwork together, although it also appears that the untimely death of a close friend was a contributing factor to his noncompliance with his legal filing obligations for 2008 and subsequent tax years. After the state acted to freeze his bank assets around December 2009, Applicant hired a tax resolution professional to assist him with filing his delinquent returns. Applicant filed his tax returns for tax years 2006 through 2009 between January 2010 and January 2011. As of the issuance of the SOR in October 2014, he had yet to file his income tax returns for tax years 2011 and 2012 (SOR ¶ 1.b). On his QNSP, Applicant indicated that he was entitled to annual federal refunds of \$1,000 and state refunds of \$100, which he did not receive because of his late tax filings. The Government did not allege that Applicant owes any back taxes, and there is no evidence that Applicant intended to evade taxes. Even so, filing of timely tax returns is an important obligation of U.S. citizenship. Noncompliance raises doubts about whether an individual can be counted on to comply with well-established government rules, including the regulations for protecting classified information. See ISCR Case No. 01-05340 (App. Bd. Dec. 20, 2002). Disqualifying condition AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same,” applies.

Security significant financial considerations concerns are also established by Applicant’s misuse of an employer-sponsored credit card between 2010 and 2011. Applicant reported he made unauthorized purchases totaling \$28,644. Knowing that the credit card was to be used only for business, Applicant charged the \$400 to \$500 retainer fee for his tax preparer on his company card. He also used the card to rent vehicles for the young drug addict he helped between February 2010 and November 2011. He bought gasoline twice on the card and also paid a \$300 towing fee. Applicant was unable to

identify other charges that could explain the \$28,644 figure, but he testified that he arrived at the total by adding up his payments to the credit-card issuer, and he admitted that he had no business-related charges at that time. (Tr. 50-52.) Applicant denies any intent to defraud in that he paid, albeit late at times, the billed charges for the unauthorized purchases. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” could apply, but it is unclear whether he used the credit card for convenience or because he lacked the funds at the time. What is clear is that Applicant intentionally breached the trust of his employer by repeatedly misusing his employer-sponsored credit card. AG ¶ 19(d) applies:

(d) 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 financial breaches of trust.

The SOR separately alleges in SOR ¶ 1.d that Applicant provided financial support to an individual for the purpose of purchasing illegal drugs. When he answered the SOR, Applicant admitted that he gave financial assistance to “a certain individual” (i.e., the young female drug user), but for the purposes of housing, food, and transportation and not for drugs. At his hearing, he testified that he knew some of the funds he gave her would be used to support her drug habit. On his QNSP, he disclosed that while driving her to work, they would stop on occasion for her to buy street drugs, although he never gave her money intended for drug purchases. Applicant knew that he was facilitating her drug abuse by providing financial and transportation assistance. Even so, he did not intend for her to use this support for criminal drug activity. His conduct implicates Guideline F only in that he misused his employer-sponsored credit card for her benefit (e.g., renting cars for her), which is covered in SOR ¶ 1.c.

The Directive provides for mitigation where the behavior occurred so long ago or was so infrequent to not cast doubt on a person’s current reliability, trustworthiness, or good judgment. AG ¶ 20(a) provides:

(a) 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.

AG ¶ 20(a) applies in part in that Applicant has not misused an employer-sponsored credit card since 2011. His card was cancelled once his employer learned about his unauthorized use, and there is no indication that his employer has seen fit to restore his access to an employer-sponsored credit card. When Applicant responded to the SOR, he indicated that the unauthorized purchases were not for his personal use. Rather, he used the card to assist “someone else.” This is not completely accurate in that his first unauthorized charge was to retain a tax professional for assistance in removing the levy on his bank assets and then filing his delinquent income tax returns. Applicant misused the card to his own benefit and can account for only a few of the unauthorized charges. However, from a financial standpoint, there is little risk of future credit-card abuse, given he no longer has access to an employer-sponsored credit card.

Concerning his tax filing issues, Applicant had yet to file his federal or state income tax returns for tax years 2012 through 2014 as of his November 2012 hearing. He is credited with filing his delinquent returns for 2006 through 2009 by January 2011, and a favorable finding is warranted as to those tax years as a result. However, he appears to have an ongoing problem with organization and motivation with regard to his tax filings. Given he has known since October 2014 about the security concerns raised by his failure to file timely tax returns, his failure to comply with the deadlines for his 2014 income tax returns is especially troubling. It would be premature to apply AG ¶ 20(a) or AG ¶ 20(c), “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.” Applicant made an important first step by contacting his EAP for assistance with the underlying issues that may well have led to his involvement with the drug-addicted woman and his inertia regarding his tax filings, but he has not yet shown that he can be counted on to comply with his tax-filing obligations going forward.

Guideline E, Personal Conduct

The security concerns about personal conduct are articulated 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.

Applicant denies that he “maintain[s] a close and personal relationship with an individual who uses illegal substances and participates in criminal activity,” as alleged in SOR ¶ 2.a, in that he has not seen the woman since 2011. As a threshold matter, the DOD is not in the business of dictating the personal relationships of cleared individuals. Yet, any association with persons involved in criminal activity raises security concerns under AG ¶ 16(g), “association with persons involved in criminal activity.” Applicant’s desire to help a young woman with a drug problem in and of itself does not engender concern. However, he repeatedly facilitated her illegal drug activity by providing her money knowing that some of it would be spent on illegal drugs, and by providing transportation for her to those places where she obtained drugs illegally. His exercise of very poor judgment in those aspects raises security significant Guideline E concerns.

Moreover, Applicant also exhibited questionable judgment when he had not filed his 2011 and 2012 income tax returns by October 2014, and when he incurred approximately \$28,644 in unauthorized purchases on his employer-sponsored credit card. The DOHA Appeal Board has held that security-related conduct can be alleged under more than one guideline, and in an appropriate case be given independent weight under each. See ISCR Case No. 11-06672 (App. Bd. Jul. 2, 2012). Applicant’s pattern of noncompliance with the legal deadlines for filing his tax returns raises concerns similar to a pattern of rule violations under AG ¶ 16(d)(3). By making unauthorized credit-card purchases totaling over \$28,000,

he engaged in a pattern of knowing violation of his employer's rule or policy restricting use of the card for legitimate business purposes. Even so, disqualifying condition AG ¶ 16(d) does not strictly apply because the conduct is covered under Guideline F. AG ¶ 16(d) provides as follows:

(d) deliberate 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:

(3) a pattern of dishonesty or rule violations.

Applicant's un rebutted testimony is that he has not associated with the young drug user since late 2011. They went their separate ways, and he has made no effort to contact her since that time. Concerning the likelihood of Applicant reacquainting himself with her and possibly facilitating future criminal activity, three mitigating conditions under AG ¶ 17 apply, as follows:

(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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(g) association with persons involved in criminal activity 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.

From a financial standpoint, the unauthorized use of an employee-sponsored credit card cannot recur if he does not have access to a credit card. However, as a personal conduct issue, his knowing and repeated breach of his employer's trust is not easily mitigated. It makes it difficult to find that he can be completely trusted to fulfill his obligations of accountability, responsibility, and good judgment required of him as a cleared employee with SCI access. Although Applicant accepted full responsibility for the unauthorized charges, he seems to think that it was not a problem as long as he covered the charges, as evidenced by the explanation provided on his QNSP:

The rules were that I would cover use of the card, as I did all along. The difficulty was two-fold—1. I was perhaps a month slow covering some of the charges. 2. My charges were not for business purposes. I did in fact cover all my charges and late fees. The card was subsequently cancelled. (GE 1.)

Applicant satisfies the passage of time component of AG ¶ 17(c), but I cannot find that Applicant is fully rehabilitated with regard to the serious judgment concerns raised by his repeated misuse of an employer-sponsored credit card. Similarly, he has not shown adequate reform of his tax filing issues. For the reasons discussed under Guideline F, above, neither AG ¶ 17(c) nor AG ¶ 17(d) applies in mitigation of the personal conduct concerns raised by his several years of noncompliance with the laws concerning timely filing of federal and state income tax returns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).³

A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern. Three of Applicant's co-workers attest to his valuable contributions at work. His unblemished record regarding compliance with security regulations is also viewed favorably. Yet, it is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Applicant failed to display the sound judgment, reliability, and trustworthiness expected of him as a longtime clearance holder with SCI access eligibility when he did not file timely federal or state income tax returns. He compounded the concerns about his judgment when he misused an employer-sponsored credit card to address his personal tax issues and to rent cars for a young drug addict he had known for only a short time. For the reasons stated above, I am unable to conclude that it is clearly consistent with the national interest to continue Applicant's security clearance eligibility.

³ The factors under AG ¶ 2(a) are as follows:

- (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.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 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 national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge