



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-02330

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

04/21/2015

Decision

Harvey, Mark, Administrative Judge:

Applicant was authorized to use a government-contracted rental car while on temporary duty (TDY) to travel outside the local TDY area to visit his mother and sisters on two long weekends. He was also authorized to charge gasoline for this visit on his government-travel credit card, but not to be reimbursed by the government. He timely reported damage to the government-contracted rental car. Applicant was not authorized to receive payment for transportation expenses outside the local TDY area to visit his mother and sisters; however, he had a good-faith belief that he could submit his gasoline receipts for travel outside the local TDY area for reimbursement after his TDY. Personal conduct security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On August 10, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (GE 1) On November 6, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel*

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

The SOR alleged security concerns under Guideline E (personal conduct). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOD could not make the affirmative finding under the Directive that it is clearly consistent with national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (HE 2)

On December 15, 2014, Applicant responded to the SOR. (HE 3) On February 10, 2015, Department Counsel was prepared to proceed. On February 24, 2015, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On March 19, 2015, the DOHA issued a notice of the hearing, setting the hearing for March 26, 2015. (HE 1) The hearing was held as scheduled using video teleconference. Applicant waived his right to 15 days of notice of the date, time, and place of the hearing. (Tr. 15-16) Department Counsel offered three exhibits into evidence, and Applicant offered 19 exhibits into evidence. (Tr. 18-25; GE 1-3; AE A-R) There were no objections, and I admitted all proffered exhibits into evidence. (Tr. 19, 25; GE 1-3; AE A-R) On March 27, 2015, Applicant provided five additional exhibits, which were admitted without objection. (AE S-W) On April 1, 2015, I received the transcript of the hearing.

Findings of Fact¹

Applicant admitted the underlying facts about his TDY, including his use of a government-contracted rental car away from his TDY site, reporting two accidents involving his government-contracted rental car, and filing the gasoline receipts for travel away from his TDY site as part of his travel claim. He denied wrongdoing. (HE 3) His admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 53-year-old systems analyst who is being sponsored for a security clearance by a defense contractor. (Tr. 6, 8-9, 27-28, 54; GE 1) In 1980, Applicant graduated from high school. (Tr. 6) He served on active duty in the Navy from 1985 to 2006, and he honorably retired as a chief petty officer (E-7). (Tr. 7-8) He has taken college courses and attended numerous Navy courses during his active duty service. (Tr. 7) He worked for a defense contractor from 2006 to 2012.

In 1986, Applicant married, and in 1988, he divorced. (Tr. 9) In 1991, he married his current spouse. (Tr. 9) His four children are ages 12, 13, 15, and 26. (Tr. 9) In April 2012, Applicant began his employment overseas working for the Navy as a GS-12 employee. (Tr. 8, 26, 28)

¹The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

Personal Conduct

In January 2013, Applicant departed his overseas command for a two-month TDY in a high-cost metropolitan area of the United States. (Tr. 29, 55, 63) He was authorized a rental car at government expense on his orders, and he obtained the rental car from a national rental car company. (Tr. 30-32) The vehicle contract indicated the government would not be charged for mileage. (Tr. 55) The only charge on the government-contracted rental car would be for the eight weeks he was TDY.

On a four-day weekend (no training on a Friday) and a three-day weekend (President's Day weekend) in February 2013, Applicant checked out of his hotel and traveled about 270 to 280 miles from his TDY site to visit his mother and sisters. (Tr. 33-35, 55, 64) His trip was within the distance limitations of his TDY school for traveling on a weekend without taking leave. (Tr. 32-33; AE D) He informed his command at his TDY location that he was traveling out of the local area before his trips. (Tr. 35) He believed he was authorized to drive the government-contracted rental car to visit his mother and sisters on the long weekends. (Tr. 36) There was no mileage charge or mileage limitation on the rental-car contract.

Applicant used his government-travel credit card to purchase \$316 of gasoline while traveling to visit his mother and sisters on the two long weekends in February 2013 while away from his TDY site. (Tr. 36, 38, 64) Applicant emailed the government-travel credit card processing entity and received a reply indicating his use of the government-travel credit card to purchase gasoline under the circumstances was not a violation of the government-travel credit card rules. (Tr. 37; AE N)²

Applicant's supervisor determined that whenever he did not claim reimbursement for his hotel room at his TDY location should be considered "personal time," and he denied Applicant's claim for per diem and expenses on those days. (Tr. 39) Applicant noted that under the Joint Travel Regulation (JTR) he was entitled to per diem while away from his permanent duty station on the weekends at the local rate where he was actually located; however, the only expense Applicant claimed was his gasoline expense. (Tr. 39-40) Applicant checked out of a hotel for seven days, and the government hotel and per diem in the high-cost area he was TDY was \$170 a day. (Tr. 40)

Applicant's government-contracted rental car was hit by another vehicle at his TDY location while Applicant was driving. (Tr. 45) The police cited the other driver for

²See DOD Regulation, 7000.14-R, Financial Management Regulation, Vol. 9, Chapter 3 (April 2014), para. 031006 (stating "Expenses Incident to Official Travel. The cardholder, while in a travel status, may use the travel card to charge non-reimbursable expenses incident to official travel such as in-room movie rentals, personal telephone calls, exercise fees, and beverages, when these charges are part of a room billing and are reasonable. Additional expenses incurred for spousal occupancy (hotel room) and meals may be included if inherent to the traveler's lodging billing statement even if the additional expense is not reimbursable. The traveler is required to pay all charges (whether reimbursable or non-reimbursable) as part of the normal travel settlement process. Separate charges for airfare, hotel rooms, rental cars or meals for spouses or family members are not authorized to be charged on the IBA, except as determined by the Components for authorized dependent travel (i.e., PCS travel).").

running a red light, and Applicant did not receive a ticket. (Tr. 45; AE L) Applicant called the rental car company shortly after the accident, and the rental car company told him to return the rental car to the rental car company the day after the accident in accordance with the rental car agreement. (Tr. 46) The rental car company provided a replacement vehicle to Applicant. (Tr. 46) Applicant informed his supervisor at the training center where he was TDY of the accident. (Tr. 46) Applicant told his spouse about the accident, and she informed his co-workers at the overseas location. (Tr. 46)

A couple of weeks later, Applicant was driving his government-contracted rental car, and it was stuck and damaged by a piece of wood that fell off of a truck. (Tr. 47) Applicant returned the government-contracted rental car to the rental car company, and the rental car company provided another vehicle. (Tr. 47) Applicant informed the commander of the training center where he was TDY of the accident. (Tr. 47) There is no evidence that the rental car company sought reimbursement from Applicant or the government for the damage to the two government-contracted rental cars.

When Applicant returned from TDY, he provided three rental car receipts, along with a copy of the police-accident report to the travel clerk, and he explained he was in two vehicle accidents. (Tr. 42-43, 48; SOR response) He provided his gasoline receipts, including the receipts while he was visiting his family on the two long weekends in February 2013. (Tr. 43) His hotel receipts showed his changes in lodging arrangements, and his gasoline receipts showed he was away from his TDY location when he purchased gasoline. (Tr. 42-44) The travel clerk at his overseas place of duty accepted his documentation, and he was told he should return when the travel claim was prepared by the travel clerk. When he returned and before he could sign his travel claim, he was accused of attempting to file a false claim for reimbursement of his gasoline expenses. (Tr. 43-44) He explained to his supervisor that the gasoline receipts were while he was away from his TDY location visiting family. (Tr. 42-44) He was on employment probation, and his command terminated his Navy employment overseas as a GS 12. (Tr. 54; SOR response) His claim was filed for him without his signature. (SOR response) He asked if he could review and revise his claim, and he was informed that he could not do so. (SOR response) The record does not contain a copy of his travel voucher, gasoline receipts, or hotel receipts.

Applicant emphasized that at the time he submitted his receipts he believed he was authorized to claim reimbursement for his gasoline on the two long weekends because he saved the government more than \$1,000 by checking out of his hotel room over the two long weekends. (Tr. 55) Applicant conceded his research after he was fired indicated he may not be entitled to reimbursement of his gasoline costs. (Tr. 55-56) Applicant provided copies of the references and Comptroller General opinions he obtained after his TDY voucher was filed by his command. (AE E-K, T-U, W)

Character evidence

Applicant's former supervisor for five years described him as "a highly professional and trustworthy" person with integrity. (AE A) He was "an outstanding

employee who was always willing to sacrifice his personal time to support the fleet.” (AE A)

A senior lab technician, who has known Applicant for 14 years, lauded his exceptional expertise and professionalism. (AE C) Applicant “would be an excellent asset for any organization.” (AE C)

A retired Army lieutenant colonel, who served with Applicant in a hostile fire zone for one year, said Applicant performed sensitive and important duties for the United States. (AE B) He has “absolute, unfailing trust in the trustworthiness and integrity” of Applicant. (AE B)

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 that, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or 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. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Nothing in this decision should be construed to suggest that I 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 not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Personal Conduct

AG ¶ 15 articulates the security concern relating to personal conduct:

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.

AG ¶ 16 provides three conditions that could raise a security concern and may be disqualifying in this case:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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; and

(d) 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;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations;

(4) evidence of significant misuse of government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing,

Applicant's supervisor accused him of using a government-contracted rental car for personal use, improperly charging gasoline on his government-travel credit card, and filing a false travel voucher. He was also accused of failing on two occasions to timely report damage to a government-contract rental car. These allegations, if true, implicate AG ¶¶ 16(c) to 16(e). Further inquiry about the applicability of mitigating conditions is required.

AG ¶ 17 includes one condition that could mitigate security concerns. AG ¶ 17(f) reads, "the information was unsubstantiated or from a source of questionable reliability." The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant suggested that he could be authorized travel expenses to his “home of record,” which was the location of his mother and sisters when he was on active duty in the Navy. DOD Regulation 7000.14-R, Financial Management Regulation, Vol. 9, Chapter 5 (February 2013), paragraph 051202 states:

When a traveler voluntarily returns to the [permanent duty station (PDS)] during a TDY period, limit his or her entitlement to the lesser of the actual travel cost for the roundtrip to the PDS and what it would have cost had he or she remained at the TDY site. The factors included in determining actual travel costs are: per diem for the travel days; roundtrip transportation for the mode used; and cost for quarters retained at the TDY site. See JFTR/JTR, Appendix O, para. T4030-J and JTR Chapter 4, Part E, para. C4677. (AE E)

Joint Federal Travel Regulations (JFTR)/Joint Travel Regulation (JTR) Appendix O, paragraph J, T4000-T4070, states:

If the [Authorizing Official (AO)] does not authorize travel home periodically on weekends or non-workdays, it may still be performed for personal convenience. If so, reimbursement for the round-trip transportation and en route per diem is authorized, but limited to the amount of per diem the GOV'T would have paid had the driver remained at the TDY location. (AE F)

Applicant traveled to his mother’s residence, which was his home of record when he was on active duty. He urged application of paragraph 051202 and Appendix O to allow reimbursement of gasoline expenses to his home of record. Applicant’s PDS when he was TDY was the overseas location where his official duty station was located and his family resided; the reimbursement is limited to his PDS; and he is not eligible to receive reimbursement for travel expenses to his home of record when he was on active duty in the Navy.

Applicant provided a copy of Joint Travel Regulation (JTR) Chapter 4, Part E, para. C4677, which indicates “‘extended TDY’ means directed continuous travel of 3 or more weeks.” Para. C4677B.1. states:

A traveler, who travels to a location (other than the PDS or place of abode from which the traveler commutes daily to the PDS) for personal reasons, (and returns to the TDY location) is not authorized transportation expense reimbursement. The traveler is authorized only per diem-related expenses based on the TDY location per diem rate and any reimbursable expenses (APP G) that would have been allowable had the traveler remained at the TDY location (B-200856, 3 August 1981; and B-214886, 3 July 1984). Para. C4563-E. (AE J)

Applicant provided Comptroller General opinions where the claimants on TDY went to a distant location on a long weekend for personal nonofficial reasons and then claimed

transportation expenses. The claims for transportation costs were denied, although the distance traveled in the cases he provided was greater than in Applicant's case, and the government did not save hotel costs, which were greater than the transportation expenses. In B-214886 (July 3, 1984), for example, the claimant's official station or PDS was Portsmouth, New Hampshire; his TDY location was Arlington, Virginia; his residence was in Portland, Maine; and the claimant traveled to Kansas City, Missouri. The Comptroller General opined that claimant was not authorized reimbursement of his transportation expenses from Arlington, Virginia to Kansas City, Missouri and return; however, he was authorized per diem while away from the TDY site. The Comptroller General opinion explained:

[T]he location at which an employee chooses to spend his nonworkdays while in a travel status is of no particular concern to the Government, insofar as it does not interfere with the performance of assigned duties. Therefore, as employee's entitlement to per diem or actual subsistence expenses as authorized continues, unless otherwise restricted. . . . *Id.* at 4. (AE U)

Applicant is not authorized transportation expenses; however, he is authorized local travel in or around the TDY location. Local directives are supposed to "clearly define the local area which transportation expenses may be authorized or approved." See DOD Regulation 7000.14-R, Financial Management Regulation, Vol. 9, Chapter 4, para. 0408. DOD has not defined "local area" in terms of a specific distance. The Defense Travel Management Office provides this guidance:

See par. 2800-B for information about who has the authority to establish the "local area" boundaries. As an example, see DoDD 4515.14 for the Washington, DC, area. An arbitrary distance radius must not be established in setting up the local commuting area of the permanent or TDY station (59 Comp. Gen. 397 (1980)). The local area in which transportation expenses may be authorized/approved are:

- a. Within the duty station limits (permanent or temporary) and the metropolitan area around that station ordinarily served by local common carriers;
- b. Within a local commuting area of the duty station, the boundaries of which are determined by the official directing travel or as prescribed by local Service/Defense Agency directives; or
- c. Separate cities, towns, or installations adjacent to or close to each other, within which the commuting public travels during normal business hours on a daily basis.³

³The Defense Travel Management Office website, updated October 1, 2014, <http://www.defensetravel.dod.mil/site/faqlocaltvl.cfm>.

See *also* DOD Regulation 7000.14-R, Financial Management Regulation, Vol. 9, Chapter 4 (July 2014), para. 040701 (“The AO should make sure local directives clearly define the local area in which transportation expenses may be authorized or approved for conducting official business (See JFTR, para. U2800 and JTR, para. C2800). When two or more installations are in close proximity, the senior commander or senior Service commander should determine the local area. When travelers perform TDY in the local area and require lodging, travel orders are necessary to support the claim.”). The record in this case lacks any evidence of the limits of the “local area” around Applicant’s TDY site, and Applicant has not met his burden of proving that the boundaries of the local area extend from his TDY site to the location about 270 to 280 miles he went to visit his mother and sisters.

DOD Regulation 7000.14-R, Financial Management Regulation, Vol. 9, Chapter 4 (July 2014), paragraph 040603 discusses “leisure use with official use” of a government-contract rental vehicle while on TDY as follows:

A traveler who is on official travel with an authorized rental vehicle, who also uses the vehicle during authorized leave, will only be reimbursed for the amount it would cost to rent the vehicle, on a daily basis, for the number of days of official travel. The Defense Travel Management Office (DTMO), Rental Car Agreement, only covers official duty. Rental car vendors have different procedures and the traveler must check with the rental car vendor to determine if the rental car must be returned after the official business portion of TDY in order to obtain another rental car for personal use.

Applicant did not take leave on the weekends when he traveled away from his TDY location to visit his mother and sisters. He was on TDY status over the weekends. There was no charge to the government for the additional miles on the rental contract. Still, if he had been in an accident outside the local area, there may have been a question of liability. The contract between the rental car company and the government or between Applicant and the rental car company may address this circumstance. In any event, there is no evidence Applicant violated his rental car contract with the rental car company or the contract between the government and the rental car company by traveling to visit his mother and sisters over the two long weekends.

Applicant provided the police report of his accident to his supervisor upon return to his official station or PDS overseas. He disclosed both accidents to the command at his TDY location. There is no evidence of record that he violated any rules or regulations by not reporting the accidents in a more timely fashion to his supervisor.

Title 18 U.S.C. § 287, prohibits false, fictitious or fraudulent claims, and this section provides:

Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or

agency thereof, *knowing such claim to be false, fictitious, or fraudulent*, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title. (emphasis added)

DoD 7000.14-R, Financial Management Regulation, is composed of 15 volumes and consists of more than 7,000 pages. The JFTR/JTR is also a pertinent lengthy reference. These references are constantly undergoing change. Local commands have their own travel policies and rules. Decisions of the courts, the Defense Finance and Accounting Service (DFAS), and Comptroller General may affect whether a claim is payable.

A traveler is not expected to be an expert on these myriad of travel rules. A traveler's obligation is to honestly and accurately complete the necessary forms and provide supporting receipts upon request. A traveler is entitled to ask for reimbursement of expenses while TDY so long as the expenses were actually incurred and the traveler has a good-faith belief that there may be an entitlement for reimbursement. Applicant saved the government money by checking out of his hotel and traveling to stay with his mother and sisters over two long weekends. He honestly believed he should be reimbursed for his gasoline expenses, which were less than his hotel expenses would have been. Financial reimbursements of some travel claims, such as Applicant's, are quite technical, and Applicant's erroneous belief that he was entitled to reimbursement of gasoline expenses on the two long weekends does not constitute fraud as he did not know "such claim to be false, fictitious, or fraudulent" under 18 U.S.C. § 287. Applicant met his responsibilities as a traveler, and he did not knowingly and intentionally submit a false claim. AG ¶ 17(f) applies and mitigates personal conduct security concerns.

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.

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. My comments under Guideline E are incorporated into my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

The evidence supporting continuation of Applicant's clearance is more substantial than the evidence supporting revocation. Applicant is a 53-year-old systems analyst who is being sponsored for a security clearance by a defense contractor. He served on active duty in the Navy from 1985 to 2006, and he honorably retired as a chief petty officer. He worked for a defense contractor from 2006 to 2012. In April 2012, Applicant began his employment overseas working for the Navy as a GS-12 employee.

Applicant's former supervisor for five years described Applicant as "a highly professional and trustworthy" person with integrity, who "was an outstanding employee who was always willing to sacrifice his personal time to support the fleet." A senior lab technician, who has known Applicant for 14 years, lauded his exceptional expertise and professionalism, and stated Applicant "would be an excellent asset for any organization." A retired Army lieutenant colonel, who served with Applicant in a hostile fire zone for one year, noted that Applicant performed sensitive and important duties for the United States and described him as trustworthy and honest.

Applicant was forthright and candid about his use of a government-contracted rental car while on TDY to travel outside the local TDY area to visit his mother and sisters on two long weekends in February 2013. He checked out of his hotel room saving the government hundreds of dollars. When he returned to his overseas official station, he submitted receipts for \$316 in gasoline charges on his government-travel credit card for reimbursement for his travel expenses on the two long weekends. He also submitted information about the two accidents involving his government-contracted rental car. Applicant's charges on his government-travel credit card for gasoline used to visit his mother and sisters while on TDY were authorized. His request for reimbursement of his gasoline expenses to visit his mother and sisters was based on his good-faith belief that his actions were authorized; however, his supervisor or DFAS appropriately refused to reimburse his \$316 in gasoline travel expenses. Applicant's good faith belief that his gasoline expenses were reimbursable was not unreasonable, and his belief that the \$316 was reimbursable negates the intent to defraud element of making or submitting a false claim.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude continuation of Applicant's access to classified information is clearly consistent with national security.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to continue Applicant's security clearance. Eligibility for access to classified information is granted.

MARK HARVEY
Administrative Judge