DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 07-10999
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Per Se*

July 28, 2008

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On November 9, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on November 28, 2007, and requested a hearing. The case was assigned to me on April 2, 2008, and was scheduled for hearing on April 28, 2008. A hearing was held on April 28, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of 10 exhibits; Applicant relied on one witness (himself) and two exhibits. The transcript

(R.T.) was received on May 7, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is granted.

Procedural Rulings and Evidentiary Issues

Before the close of the hearing, Appellant requested leave to supplement the record with possible documentation of indemnity with his insurance company covering the reported balance on his vehicle repossession. For good cause shown, Applicant was granted 10 days to supplement the record. Within the time permitted, Applicant supplemented the record with an explanatory cover letter and two letters from his insurance agent and carrier. Department Counsel did not object to the submissions but underscored Applicant's changed perceptions about the intended nature of his arrangement with the dealer he negotiated with over a Mitsubishi sports vehicle (*i.e.,* from his emphasis on a purchase to his hearing perceptions of a lease).

Department Counsel suggests different legal ramifications with a lease than with a purchase: Specifically in a lease situation, Applicant would not be expected to ow anything additional if the damaged vehicle were properly insured (*see* Department Counsel's memorandum re: Applicant's post-hearing submissions). Both Applicant's post-hearing exhibits and Department counsel's suggestions were admitted and considered.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have accumulated one delinquent debt in the amount of $19,199.00. This debt represents a deficiency balance on a repossessed vehicle.

For his answer, Applicant denied the deficiency debt. He claimed he never signed any vehicle purchase papers and was permitted to drive the car off the lot to test drive for a three-day period. He claimed that the car was in an accident (no fault of his) and was in and out of the shop for repairs for over a year before he told the seller he wished to return the car. He claimed he continued to make payments on the car during the year it was in repairs at the urging of his insurance company. He claimed that the seller wanted $14,000.00 to put him in a replacement vehicle, which he refused and demanded unsuccessfully to see original purchase papers the dealer claimed he and his wife signed. Applicant claimed that he has tried over the past few years to convince the dealer that the purchase papers they eventually furnished him contained forgeries of he and his wife's signatures. And he claimed that he has submitted handwriting samples, depositions and requests to remove the alleged deficiency from his credit report, but to no avail.

Findings of Fact

Applicant is a 59-year-old law-enforcement professional for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by

Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant is married and has two stepdaughters (both grown). He has 13 years experience as a police officer before leaving to establish his own consulting business in 2005. Applicant spent the better part of three years in Iraq (between 2005 and 2008) working with the U.S. Army in training Iraqi police (*see* exs. 9 and B; R.T., at 90).

In April 2001, Applicant in the company of his wife (W) contacted a car dealership about purchasing or leasing a new Mitsubishi vehicle (*compare* ex 2 with ex. R.T., at 54, 64). He completed paperwork with the dealership, and turned in his wife's used Mitsubishi as a trade-in (crediting him with about $7,000.00 towards purchase of the new Mitsubishi vehicle, and collateral for his test driving a new 2001 Mitsubishi Montero sports utility vehicle (*see* ex. 2; R.T., at 58-59,64-65). By his own account in his electronic questionnaire for investigations processing (e-qip) (see ex. 10) and in his certified 2007 OPM interview, he agreed on terms of purchase and/or lease with a purchase option of a 2001 Mitsubishi Montero with the dealer's salesman (*see* exs. 1 and 2, R.T., at 65).

Applicant acknowledged, too, that he accepted finance terms with the dealer's finance company and initiated monthly payments of $461.00 a month to the finance company (ex. 2). While Applicant himself does not admit to signing required "proper documentation" for the vehicle (R.T., at 64-65), his wife (W) certified to Applicant's purchasing a new 2001 Mitsubishi from the same dealer in an affidavit she executed in April 2006 for an intended police report (*see* ex. 9).

Both W and Applicant claim that someone forged their names to sales documents: a credit application in W's case (*see* exs. 8 through 10) and a sales contract under date of April 20, 2001 with Applicant (*see* exs. 2 and 7). In disclaiming his signing the referenced sales contract in exhibit 7, or other proper documentation (his characterization), he doesn't define the contract provided him by the dealer's agents or attempt to explain its contents.

Whatever sales terms Applicant and the dealer's salesman agreed to in April 2001, it is most likely they committed their understanding of Applicant's purchase of the vehicle to some kind of written understanding, no matter how imperfect the document might have been. Considering that Applicant was turning his wife's car over to the dealership as an intended trade-in, it is conceivable that the salesman applicant dealt with considered the trade-in to be adequate collateral for release of the vehicle. Without documentation of the parties' understanding, this can only be considered a possibility. The purchase or lease document itself that the parties signed might have been brief and lacking in all of the fine print, but sufficient to consummate a vehicle purchase and/or lease/purchase arrangement. Together with the trade-in collateral that Applicant and W left with the dealership, the documentation might well have been legally sufficient to justify the dealer's permitting Applicant and his wife to drive the car off the lot for a three-day test drive (a practice enforced by most states).

Apparently satisfied with the documentation Applicant provided, the dealer's salesman then permitted Applicant to drive the vehicle off the lot and return it in three days time if he did not like it (R.T., at 65-66). Applicant, in turn, drove the Mitsubishi SUV off the lot with an insurance binder on the car from his own insurance company (*compare* Answer with ex.2).

Once away from the dealer's lot, Applicant drove the Mitsubishi vehicle placed in his custody well outside the geographical boundaries of his community. While test driving the vehicle in an area outside his immediate community, he was involved in an accident, which was not his fault *(see.* exs. 2 and D). After the incident, Applicant promptly called his insurance company to report the accident and make a claim on the offender's insurance policy (*see* ex. D; R.T., at 72-73). Contemporaneously, he called the dealership to pick up the car and take it to their body shop for repairs (*see* ex. 2: R.T., at 72-75). At all times, Applicant dealt with his insurance company, who, in turn, interfaced with the offender's responsible carrier (R.T., at 73). His account of this chain of events is corroborated by his insurance carrier (*see* exs. C and D).

Over the course of the ensuing year, the Mitsubishi SUV entrusted to Applicant was in and out of the seller's designated body and repair shops (R.T., at 61-62, 79-80). While in for repairs, Applicant was furnished a loaner car by the repair shop (R.T., at 61-62). Applicant and his carrier deferred to the seller to take responsibility for the quality of the work on the damaged vehicle (R.T., at 82). Presumably, the seller had opportunities to assess the condition of the car and make at least preliminary assessments about safe and effective restoration of the vehicle to its pre-accident condition. The seller's approvals of the vehicle's restoration to top condition are implicit in its joint endorsement (with Applicant) of the $12,000.00 check from the offender's insurance company in full settlement of their joint and several damage claims from the offender's insurance company (*see* exs. C and D; R.T., at 74-92).

Based on his completed purchasing and financing papers (in whatever document form they were prepared), Applicant continued to make $461.00 monthly car payments to the seller through August 2002, or thereabouts (*see* ex. 2; R.T., at 61). Without the ensuing April 2001 credit application and formal sales contract that Applicant and W claim were forged, it is not clear just what specific documentation the dealer and its financing arm were relying on, but they did continue to accept Applicant's monthly payments on the vehicle for over a year (*i.e.,* April 2001 to August 2002).

Frustrated with seemingly endless repairs (which exceeded $12,000.00 in outlays), Applicant tired of retaining the vehicle and asked the dealer around August 2002 to trade in the Mitsubishi for a new vehicle (R.T., at 33, 92-93). The dealer (Applicant assures), in turn, offered to place Applicant in a new vehicle for an additional $14,000.00 down payment (*see* ex. 1; R.T., at 28, 33, 63, 85-88). When Applicant asked the dealer for completed sales documents covering his supposed purchase of the vehicle, the dealer advised that it could not find the sale documents (*see* ex. 2; R.T., at 33-34). Applicant refused the dealer's offer and requested the dealer to voluntarily

repossess the vehicle (apparently in Applicant's possession at the time) (*see* ex. 2). The dealer complied with Applicant's request.

At the time he turned the entrusted Mitsubishi SUV over to the seller, he claims his outstanding balance on the vehicle was $18,072.00 (*see* ex. 2). His claim is not challenged and is a plausible amount under all of the circumstances. The vehicle at issue was a new and small 2001 Mitsubishi SUV that is carried as a joint purchase in Applicant's February 2007 credit report (ex. 4) with a listed purchase price of $31,431.00. Without more to go on, this price would appear to represent the sticker price of the vehicle without regard to any trade-in credits. Both of his recent credit reports (exs. 3 and 4) report a $19,199.00 balance on an account closed and transferred. This reported sum (inclusive of some added interest) would appear to be a net sum that credits Applicant for his trade-in and year's payments. What this reported deficiency does not appear to cover is a credit for the proceeds of the vehicle's resale, release, or public auction sale.

By taking responsibility for the repair of the Mitsubishi SUV vehicle at Applicant's request and joining in the settlement of Applicant's insurance claims with the offender's carrier, the seller implicitly certified to restoration of the vehicle to its original condition. As an almost new car in top condition (seller's certification in endorsement of insurance check), it could be expected to bring at least 75 per cent of its new sticker price. If this were the case, Applicant could well be a net creditor of the seller and its collection agent, not a debtor.

Shortly after declining Applicant's request for copies of the sales documents covering his Mitsubishi purchase/lease, the dealer located the sale documents and faxed them to Applicant (ex. 2; R.T., at 64). When Applicant examined the furnished sales documents, he claimed the signatures of himself and W had been forged. Because he did not specify which documents were forged, his forgery claims could not be immediately pinned down (R.T., at 34, 57-58). Once Applicant and his engaged attorney advised the seller of their impressions, the seller suggested they file a police report. Additionally, the seller asked for handwriting samples and an affidavit (R.T., at 34-35). Applicant complied with the dealer's affidavit request at the time, but did not provide any handwriting samples

Once Applicant and W were alerted that the Mitsubishi dealer and its collection agency had referred a deficiency claim on Applicant's returned vehicle to credit reporting agencies, they engaged attorneys to investigate their actions. Their engaged attorneys who conducted their own investigation of the car dealer's providing negative information to credit reporting agencies confirmed their findings that an employee of the dealership affixed the names of Applicant and W to a credit application and sales contract in April 2001 without their approvals (*compare* exs. 2, 7 through 10 and A).

Acting on his attorneys's advice, Applicant and W prepared affidavits in 2006 for prospective filing of a malfeasance report with the local police department (*see* exs. 7 through 9). The police detective who took Applicant's inquiries in 2006 about filing a

malfeasance complaint on the Mitsubishi dealership advised him that due to the remoteness of time and the difficulty in identifying the offending party the police would not pursue an investigation and would not require handwriting samples (*see* ex. 9). Consequently, neither Applicant, W nor their attorneys proceeded with the filing of a police report covering the incident and furnishing handwriting samples. Over the ensuing years, Applicant's attorneys and the seller's collection agents exchanged correspondence and proofs addressing the dispute (*see* exs. 7 through 10 and A; R.T., at 36).

Because no sales documentation was made available by either party, it is difficult to ascertain what precise business arrangements Applicant made with the car dealer in April 2001. Applicant does provide potentially conflicting accounts of his arrangement. In his e-qip and OPM interview summary he described the arrangement as a purchase. At hearing, though, he offered a little bit different perception: characterizing his impressions as a contemplated lease arrangement.

Auto leases, like straight purchases, typically lock in monthly payments over the life of the agreed lease and can result in repossessions for non-payment not unlike vehicle purchases. Just as repossession of a leased vehicle before the expiration of the lease term does not release the lessee from his remaining lease obligations under the terms of his lease, a lessor's repossession of the vehicle for non-payment or other lease default still imposes responsibility on the lessor to mitigate its potential losses by crediting the lessee with the proceeds of sale of the vehicle on his remaining lease obligations. In a lease/purchase arrangement, the lessee is typically offered the choice of keeping the vehicle to term or buying off the remaining time on the lease with a negotiated purchase of the vehicle based on the vehicle's assessed blue book value at the time of conversion. Where payment suspensions are contemplated by the consumer, it probably does not make a great deal of difference for consequential purposes whether the legal transaction is characterized as a purchase or a lease.

With the legal ramifications between a lease and purchase duly noted, several pieces of evidence do point to Applicant's completing a purchase of the vehicle. His acknowledgments of a purchase in his e-qip and OPM interview are quite probative (*see* exs. 1 and 2). His obtaining an insurance binder on the vehicle with his own insurance company, and his taking possession of the vehicle (R.T., at 31) are certainly consistent with ownership or lease of the vehicle. At the very least, Applicant's actions created a bailment, by which Applicant assumed legal responsibilities for the care of the car while he had custody of the vehicle. Arranged car payments of $461.00 a month with the dealer's financing agency before he assumed possession of the car are also consistent with an ownership transfer or lease, even if reversible within the time specified in the contract and state law.

Applicant's turning over his old vehicle in trade (R.T., at 58-59) is consistent, too, with a purchase, or perhaps a lease. W's acknowledging Applicant's signing purchase papers at the dealership while denying any responsibility of her own provides further evidence of Applicant's purchase of the vehicle. So, too, Applicant's continued car

payments for over a year on the SUV vehicle and his negotiated settlement with the offender's insurance carrier over repairs and any injuries (Applicant claims limits in the offender's insurance policy) are demonstrative, too, of a purchase or lease of the vehicle in issue.

What remains unclear is what Applicant and W allegedly signed in April 2001. Applicant swears in his affidavit that he never signed a sales contract in April 2001 that contains his signature (s*ee* ex 7; R.T., at 60-62); while W swears she never signed a credit application or sales agreement that bears her signature. Both sworn affidavit accounts are reconcilable with Applicant's claims. Missing, though, are copies of the disputed documents themselves. Neither party has provided copies of sale documentation of any kind (to include purchase memoranda agreements, with or without all of the fine print, pre-test drive financial arrangements, agreements of terms and conditions of release of the subject vehicle to Applicant, and any post-car release credit applications, forged or otherwise). Whether any of the underlying documentation is currently available is unknown.

The evidence is strong, though, that Applicant consummated a financed purchase of the Mitsubishi SUV he drove off with in April 2001. In addition to his continuing to make payments on the vehicle, he completed a settlement agreement with the offender's insurance carrier to cover the car's repairs. If Applicant had neither purchased nor leased the vehicle, a reasonable case can be made that the seller and its carrier would have taken the lead in working out third-party compensatory arrangements with the offender's insurance carrier, and not required Applicant's co-signature. As it was, it appears that Applicant and his carrier took the lead in working with the offender's carrier, while collectively deferring to the seller for the supervising of repairs.

Other events point, too, to the consummation of some kind of Applicant purchase or lease of the vehicle at issue. Applicant is of record in confirming that the vehicle he turned in before taking custody of the Mitsubishi in April 2001 was worth approximately $7,000.00 (R.T., at 59). If he did sign over title to his turned in vehicle, realistically he should have been entitled to a prompt return of the vehicle when he voluntarily turned the SUV back to the seller. His failure to demand return of his trade-in makes sense only if he had completed transfer papers before taking possession of the Mitsubishi SUV.

Applicant's taking the vehicle on a three-day family trip outside of his immediate community is difficult, too, to reconcile with an agreed test-drive of the vehicle without any assumed purchase or lease obligation. For a simple test drive arrangement, the seller's carrier would likely have born responsibility for any accidental damage. That Applicant felt the need to engage his own insurance carrier is more consistent with an assumed purchase or lease of the vehicle. Not only is there no sales agreement (forged or not) to assess the respective obligations of the parties under the terms of the document, but Applicant never filed any contemporaneous police report (*see* ex. 2).

Besides a lack of any paper record of Applicant's sales dispute over the Mitsubishi vehicle he is billed for, there is no documented evidence of any legal action initiated by

Applicant. All that is compiled in the record are credit reports reflecting a deficiency balance, written accounts from W, Applicant's interview summary and answer, and exchanged letters between the seller's collection agent and Applicant's attorney documenting a dispute and threatened litigation over the vehicle's purchase and the balance owed, and Applicant's insistent hearing claims that the sales papers faxed to him by the seller after his disrupted test drive was a forgery.

From the evidence compiled in the record, inferences warrant that Applicant entered into some kind of lease or purchase arrangement with the seller that enabled the seller to release the vehicle to Applicant in April 2001 for a try out. Whatever arrangement Applicant worked out with the seller quite likely had a three-day trial period (a common requirement in most states). Applicant's actions are consistent with his assuming some kind of purchase or lease of the vehicle when he drove it off the dealer's lot in April 2001 and took it on an extended in-state trip. His trade-in of his own vehicle, his continued monthly payments on the vehicle, and his settlement with the offender's insurance company on repairs made by the seller or its designee all serve to strengthen the case for an imputed purchase or lease.

Of course, were Applicant able to provide firm proof of a forged credit application, such proof could provide an affirmative defense to any purchase or lease claims of the seller (regardless of any other paperwork completed by Applicant). But neither of the parties document any initiated legal proceedings to prove or disprove Applicant's forgery claims, and the time for initiating any such claims would appear to have expired. So, without more to corroborate Applicant's forgery fraud claims, there is enough evidence here to draw material inferences of Applicant's acquired ownership or lease interest of the disputed 2001 Mitsubishi SUV.

Finding an Applicant purchase of his disputed vehicle arrangement does not end the matter. Questions still persist about the overall merits and enforcement potential of the seller's demanded deficiency. Based on the seller's demanded $18,072.00 deficiency (R.T., at 96), it is reasonably likely from the credit reports and other evidence that Applicant was credited with his trade-in and his $5,562.00 in payments over the 2001-2002 period. It is much more doubtful, though, that he was ever credited with any proceeds produced by the seller's resale, release or public sale of the SUV in issue. Certainly, the seller and collection agency provide no evidence or clues as to how they credited Applicant with the resale, release, or the public sale of his fully repaired vehicle (*compare* exs. 2 through 4 and 10).

From the correspondence produced, there is good reason to question the accuracy of the seller's reported deficiency claim. All together, the compiled evidence covering the seller's deficiency claim reflects a legitimate dispute of the merits of the SOR debt. The creditor has reportedly agreed to remove the debt from Applicant's credit report in exchange for Applicant's dropping his threatened legal action (*see* exs. 10, A and B; R.T., at 40). Applicant's most recent October 2007 credit report (*see* ex. 3) reflects a transfer of sale of the account and no mention of the collection agent that acquired the deficiency claim.

Applicant assures that he has good credit and was able to recently purchase a Land Rover with an $11,500.00 down payment (R.T., at 42). His accounts listed on his most recent credit report are reported to be in current status (*see* exs. 3 and 4).

Applicant is highly regarded by his Army command, former military and civilian law enforcement colleagues he has worked with over the years, and friends He is considered trustworthy and beyond reproach in his professional and personal life (ex. B). He is credited with spending considerable time in Iraq training police professionals and is vouched for in his endorsements as a man of outstanding moral character and personal integrity (*see* ex. B).

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: "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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts."

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the

evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is a law enforcement professional with considerable experience in local and federal service (including a tour of duty in Iraq) who accumulated one major listed debt in 2002 that he still disputes. Without resolution that absolves Applicant from obligation for this listed debt, it raises initial security significant concerns.

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's association with a major debt in his credit report and his past inability to resolve it amicably, or by an initiated court action, warrants the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC 19(a) "inability or unwillingness to satisfy debts" and DC 19(c) "a history of not meeting financial obligations."

Applicant's listed deficiency from a car repossession in 2002 is disputed by Applicant in just about every way possible: the absence of a signed purchase agreement, a produced forged sales agreement and credit application from the seller, questionable sales tactics by the seller (*e.g.,* the seller's demand for $14,000.00 to place him in another vehicle),and the seller's failure to properly credit him for the value of the car he turned back.

From the testimony and documented accounts placed in evidence, there is sound reason to conclude that Applicant made some kind of purchase arrangement or lease with the seller before driving off the lot with the vehicle. To create a sustainable meeting of the minds for contractual purposes, a party need not have a detailed sales agreement laden with fine print. A simple memorandum of understanding specifying price, terms, and any trade-in credit could have been sufficient to create a purchase arrangement that complied with the state's statute of frauds requirements.

Here, Applicant's reliance on his own insurance company to cover his insurance needs while test driving the SUV vehicle, his continued payments on the vehicle after he turned it over to the seller for repairs, his failure to recover his trade-in, and the common sense weighing of the plausibility of a dealer releasing a car for three days for extended in-state travel, collectively present strong indicators of a purchase or lease arrangement of some kind. Whether or not his taking possession of the vehicle was pursuant to a purchase, a straight lease, or a lease/purchase, Applicant's probative actions at the very minimum created a contractual relationship between the parties sufficient to satisfy his State's statute of frauds.

Still, all of the makings of a legitimate dispute are visible. Failure of the seller to recoup more money on a car it certified to be fully repaired with the responsible party's insurer, the seller's failure to provide documentation of a valid, enforceable sales agreement, Applicant's forgery claims documented by affidavit and letters from his attorneys, the absence of any accounted for credits on the vehicle he turned back to the seller, and the collection agent's apparent willingness to delete the debt from Applicant's credit reports without any documented payment arrangements, undermine any seller showing of deficiency entitlement.

Without any more documented accounts of the transaction than the testimonials provided by Applicant and his attorneys, evaluation of the parties' claims and defenses is considerably complicated. The best that can be said is that the listed deficiency remains a legitimate dispute, and quite possibly a credit entitlement of Applicant's. So, under these case specific circumstances, MC 20(e), "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," has applicability to the listed deficiency debt.

Even if the disputed deficiency debt can be resolved against Applicant on the merits, mitigation credit is still available to Applicant based on the age of the debt (2002). Age of the debt at issue is covered by two of the mitigating conditions for financial considerations: MC 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," has applicability, while not dispositive. For this account, regardless of whether it reflects an otherwise valid debt owing, it may no longer be enforceable under the State's applicable statute of limitations for written contracts.

The state statute of limitations in Applicant's state for claims based on a written contract is four years (*see* 16.004(a)(3) of T Civ. Practice and Remedies Code) and claims not otherwise provided for (*see* 16.051 of T Civ. Practice and Remedies Code). While Applicant may have continuing individual liability for this debt, there would appear to be little risk of collection on the debt which by the accounts of Applicant's attorney has been resolved in Applicant's favor.

While potentially applicable statutes of limitation have not been recognized by our Appeal Board to absorb security risks associated with unresolved delinquent debts. Statutes of limitation in general are considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation. They have never been equated with good-faith efforts, though, to repay overdue creditors. *See, e.g.,* ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001).

Weight, if any, to be assigned to potential statutes of limitations under the new Guidelines should be considered in light of all the circumstances surrounding the existing debts, and must take account of the Applicant's entire history of demonstrated trust and responsibility. Viewed in this whole person light, the controlling state statute of limitation for written contracts is entitled to be accorded significant mitigation weight in evaluating Applicant's overall financial risk.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

Taking into account all of the facts and circumstances surrounding Applicant's only listed debt, his documented steps taken to resolve the dispute over the debt with the seller and its collection agent, and an overall whole-person assessment of his demonstrated responsibility and trustworthiness in his work and financial relationships with his creditors over time, Applicant mitigates security concerns related to his disputed debt. Favorable conclusions warrant with respect to the allegation covered by sub-paragraph 1.a of the SOR.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge