



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-03102

Appearances

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

August 26, 2011

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant failed to mitigate security concerns over personal conduct issues associated with his misuse of a corporate credit card and the state of his finances. Clearance is denied.

Statement of the Case

On March 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting him a security clearance. DOHA recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AGs) that were implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on April 4, 2011, and requested a hearing before an administrative judge. The case was assigned to me on May 20, 2011, and was noticed on June 2, 2011 for a hearing on June 22 2011. A hearing was held on the scheduled date. At the hearing, the Government's case consisted of ten exhibits (GEs 1-10). Applicant relied on one witness (himself) and 11 exhibits (AEs A-J). The transcript (Tr.) was received on June 30, 2011.

Procedural Issues

Before the commencement of the hearing, Department Counsel moved to amend the SOR to delete subparagraph 1.e from the SOR and re-allege it under a new financial considerations guideline as subparagraph 2.a. There being no objection from Applicant, and for good cause shown, Department Counsel's motion was granted.

Prior to the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to supplement the record with documented proof of his payoff of his Government credit card balance and a new payment plan with the creditor listed in subparagraph 2.a. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded six days to respond. Within the time permitted, Applicant supplemented the record with an explanatory letter and documentation of his payoff to creditor 1.a and a payment plan arrangement with the creditor listed in subparagraph 2.a. Applicant's submissions were admitted as AEs K through M.

Summary of Pleadings

Under Guideline E, Applicant allegedly (a) failed to pay his corporate credit card bill as agreed, even though he was reimbursed by his company for his travel expenses; (b) provided false information to his employer, stating that he was paying his corporate credit card bill, even though he knew this was not true; (c) in December 2009, his corporate credit card was canceled, the \$12,564 balance was paid by his employer, and \$500 per pay period was deducted from his paycheck to satisfy this debt; (d) in December 2009, his employer issued a final notice for dishonesty, negligence, and improper use of his corporate credit card; and (e) he is indebted to a car lender on a charged-off account in the approximate amount of \$13,867.

In his response to the SOR, Applicant admitted most of the allegations with some explanations. He denied providing false information about his payments to his employer. He claimed he had discussions with the creditor that led to his minimum payment arrangements with the creditor.

Findings of Fact

Applicant is a 54-year-old engineering technician for a defense contractor, who seeks to retain his security clearance. (GE 1) The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant married his first wife (W1) in February 1979 and divorced her in July 1980. (GE 1) He has three children from this marriage, ages 31, 28, and 26. (GE 1; Tr. 67) In June 1985, Applicant married his second wife (W2); he divorced her in April 1993. (GE 1) He married his third wife (W3) in July 1993 and divorced her in January 2007. (GE 1; Tr. 66, 70).

Applicant has one semester of college credits but no degree or diploma. (GE 1; Tr.) He enlisted in the Navy August 1979 and served 15 years of active duty. (GE 1; AE B) While in the Navy, he held a top secret clearance. (Tr. 63) Applicant received an honorable discharge with the rank of chief petty officer in January 1993. (AE B; Tr. 62) For the first three years following his discharge (1993-1996), he worked for another contractor. (Tr. 63-64) He has worked for his current employer since April 1996 and has held a security clearance for the duration of his employment. (GEs 1 and 8; AE B; Tr. 63)

Finances

Applicant first encountered financial difficulties in April 2009. (GE 2; Tr. 67) He attributed his difficulties to his trying to help his children and former spouse with their own financial needs. Besides helping his son with car repairs and his oldest daughter with a car purchase, he advanced \$10,000 to W1 (while they were separated but not yet divorced) to start a business, rent a new home, and purchase a new BMW vehicle. (GE 4; Tr. 50-51, 67-70, 70-73, 93-94) These financial assistance efforts contributed to his ensuing misuse of his corporate credit card, and subsequently the repossession of the BMW vehicle he and his ex-wife purchased together. (GE 2)

Between April 2009 and August 2009, Applicant used his corporate credit card for both travel-related purchases and personal expenditures unrelated to his travel assignments. (GE 4; Tr. 68-69) He counted on the reimbursements from his travel card to cover the travel and personal expenditures he used to help his wife and children. (GE 2; Tr. 74, 76-77, 80, 93-94) With the reimbursement travel checks from his employer, he often used the funds to cover his personal obligations instead of using them to repay his corporate credit card account. (GE 4; Tr. 76-77, 80) Payment records do reflect Applicant payments of \$3,500 in May 2009 and \$2,000 in July 2009. (GE 4)

Applicant signed a corporate credit card agreement with his company's credit card issuer in October 2003. (GE 5) In this agreement, Applicant agreed to use his corporate credit card exclusively for overhead-related travel expenses and direct charge, contract-related travel expenses. He was expressly forbidden from using the corporate card for personal or non-travel charges. (GE 5) In return for his receipt of a corporate travel card, he agreed to pay the issuer "promptly for all business charges incurred upon receipt of the monthly billing statement." (GE 5) He agreed to indemnify his company for any loss, claim, or expense arising from his failure to reimburse the issuer when charges came due. And he acknowledged in his agreement that any misuse of his corporate credit card, or violation of the terms and conditions of use, would result in disciplinary action. (GE 5)

By October 2009, Applicant's accrued expenditures on his corporate credit card for travel and personal expenses approximated \$13,845. (GE 4). He was cited by the corporate creditor with being over 150 days delinquent on his corporate credit card bill. (GEs 7 and 9) E-mail exchanges and a completed incident report (GEs 6 and 9) cite misleading Applicant accounts to his supervisor about paying his corporate credit card account on-line. Applicant disputes these claims and assures he kept his supervisor informed of his delinquent corporate credit card account and made two \$1,000 payments on the account in October 2009. (Tr. 55-58, 79-80, 117). Applicant's assurances are documented in his corporate credit card payment history; supported in his current supervisor's endorsement (AEs A and E); and are not disputed in the counseling form he accepted and signed. (GE 8) Applicant's versions of his exchanges with his supervisor about the status of his corporate credit card account are plausible ones and are accepted.

The corporate credit card issuer later credited Applicant with a \$5,000 on-line payment in June 2009 and two \$1,000 on-line payments in October 2009. (GE 4; AE E) His November 2009 corporate credit card statement reflected an ending balance of \$12,564 and no additional payments on the account. (GE 4; Tr. 87-88) Shortly thereafter, the credit card issuer cancelled Applicant's corporate credit card and notified his employer. (GE 6)

Upon being advised by both Applicant and the credit card issuer in November 2009 that Applicant was 150 days in arrears on his corporate credit card account in the amount of \$12,564, Applicant's supervisor reviewed the history of the account and advised Applicant that he had been reimbursed on his corporate credit card expenditures and needed to work out a payment arrangement to discharge the remaining balance. (GEs 8 and 9)

Based on the documented internal investigation of Applicant's reported corporate credit card misuse, Applicant was issued a final written warning in December 2009 covering his corporate credit card use. (GE 8) In the summary furnished Applicant, his supervisor cited Applicant's dishonesty in the use of his corporate credit card and his failure to pay the billed amount on the card after he has been reimbursed by his employer. (GE 8). After counseling Applicant in December 2009, Applicant's supervisor found Applicant misused his corporate credit card. (GEs 8 and 9)

As a part of the disciplinary action imposed on Applicant by his supervisor for misusing his corporate card and accruing a large balance of unpaid charges, Applicant agreed to repay his employer who had paid off the accrued corporate credit card debt of \$12,564 and looked to Applicant for its reimbursement. (AE E; Tr. 81-84) In turn, Applicant agreed to a repayment schedule as follows: \$500 per pay period through a payroll deduction until the accrued amounts are paid in full and repayment of the entire remaining balance from his final paycheck in the event his employment were to terminate before the agreed amounts had been satisfied. (GEs 7 and 8) Applicant was also advised as a part of his disciplinary action that his corporate credit card had been

canceled and that any failure to pay on his credit card balance may result in further disciplinary action, up to and including termination. (GE 8)

Applicant's corporate credit card payment history reflects a beginning year balance in January 2010 of \$12,587 and bi-weekly payments of \$500 through 2010. (AE L) He is credited with making a final payment of \$1,064 in December 2010 to satisfy his delinquent corporate credit card account in full. (AE L)

Since relinquishing his corporate credit card, Applicant has not received a replacement. When he travels on business trips, his company currently furnishes him an advance travel payment comprising 80 per cent of his per diem requirements. (Tr. 89-90) As a consequence of his misusing his corporate credit card, his company demoted him to the position of team leader and placed him under an hourly pay schedule. (Tr. 92) He has since been restored to near-normal salary levels. (Tr. 92)

Besides accumulating delinquent personal and travel-related charges on his corporate credit card, Applicant accrued a deficiency on a BMW purchase agreement he co-signed on behalf of W3 in April 2009 for the purchase of a new BMW vehicle at a cost of over \$40,000. (AE I) Applicant and his third wife co-registered the vehicle with his state's department of motor vehicles in their joint names. (GE 2 and AEs G and H; Tr. 50-51, 93-94, 102). Assuming she was making the required monthly payments on the vehicle, he made no effort to personally track her payments. (Tr. 51, 93)

In September 2009, Applicant received a call from the lender informing him that it had received no payments in four months and threatening him with repossession. (GE 2) After bringing the account current (AE J), he received a call from the same lender two months later that they had not received any additional payments. Unable to cover W3's payments any longer with his personal resources, Applicant told the lender to repossess the vehicle from his ex-spouse. (GE 2 and AE J)

After repossessing the vehicle, the lender looked to Applicant for the payment of the remaining balance following public sale of the vehicle. (GE 2 and AE I; Tr. 96-97) When Applicant did not address the deficiency balance, the lender charged off the remaining \$13,867 balance on the purchase contract. (GE 10; Tr. 97-98)

In August 2010, Applicant filed suit against W3 for reimbursement of the expenditures he was obligated to make when she failed to make her BMW payments as agreed. (AE D) W3 countered with the filing of a petition for bankruptcy protection. (Tr. 99) The status of W3's bankruptcy and Applicant's pending suit are unclear. (Tr. 99-100, 118)

Following the hearing, Applicant contacted the collection agency for the lender about his BMW account. (AE M) He set up a 36-month payment plan with the collection agent for creditor 2.a covering the outstanding deficiency balance (\$13,867). Under his payment plan with creditor 2.a, Applicant will make payments of \$385 a month, with payments due to commence in July 2011. (AE M; Tr. 116) Applicant has not provided any evidence of monthly payments under his payment plan, and it is unclear at this point whether he has made any payments to creditor 2.a or its collection agent.

Applicant is current with his remaining debts. (AE C; Tr. 100-101) He reports gross annual income of \$72,000. (Tr. 106) He owns a home and has a monthly remainder of \$450 after accounting for his mortgage, alimony (\$500 a month), and other expenses. (Tr. 108, 116) He has approximately \$20,000 in his 401(k) retirement account. (Tr. 110)

Endorsements

During his active duty military service, Applicant received numerous medals and citations recognizing his military contributions to the Navy. (AE B) His medals and citations include the National Defense Service Medal; Sea Service Deployment Ribbon with Three Stars; and the Navy Achievement Medal. (AE B) He is well regarded by his project manager and members of his employer group. (AE A) His project manager, who served as his employer's facility security officer, credits him with leadership skills, honesty, and high performance in his work assignments. (AE A)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information.

These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

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

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, 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, ¶ 15.

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. AG ¶ 18.

Burden of Proof

Under the Directive, a decision to grant or continue an applicant's request for 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 commonsense 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 adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) It must prove by substantial evidence any controverted facts alleged in the SOR; 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 proof shifts to the applicant for the purpose of establishing his or his security worthiness through evidence of refutation, extenuation or mitigation of the Government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a respected engineering technician of a defense contractor who accumulated delinquent debts associated with his misuse of a corporate credit card and assumed legal responsibility for a leased vehicle co-signed by Applicant and his ex-wife. Security concerns arise under both the personal conduct and financial considerations guidelines.

Personal conduct issues associated with misuse of corporate credit card

Judgment and trust lapses associated with Applicant's misuse of his corporate credit card, the credit card cancellation and other disciplinary actions taken against him by his employer in December 2009 were both justified and appropriate. Sanctions included relinquishment of his company credit card, demotion, and continued oversight by his supervisor and administrative staff. To be sure, Applicant has never been cited before for any indiscretion or judgment lapse and is recognized and respected for his many contributions to his company's missions and for his years of meritorious military service.

Still, Applicant understood both the letter of the credit card agreement he signed in 2003 and the card's use restrictions. Applicant's repeated misuse of his corporate credit card over a six-month period poses potentially serious personal conduct concerns. These underlying security concerns are difficult to reconcile with the trust and reliability requirements for holding a security clearance.

Looking at the developed facts and circumstances in this case, two of the disqualifying conditions under the personal conduct guideline are applicable to Appellant's situation. DC ¶ 16(d)(3), "a pattern of dishonesty or rules violations," and DC ¶ 16(d)(4), "evidence of significant misuse of Government or other employer's time or resources," have application to the facts of Appellant's case.

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily impose important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

While Applicant's strained finances played a major role in his misusing his corporate credit card, they were not enough to credit him with extenuating circumstances. Nor is his corporate credit card misuse over an extended period of time so minor or unique as to render a recurrence unlikely. See ISCR Case No. 03-24632 at 3 (Appeal Bd. May 19, 2008). As a result, Applicant may not rely on the mitigating benefits of MC ¶ 17(c), "the offense is so minor, 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."

To Applicant's credit, he acknowledged his mistakes in using his corporate credit card to accrue large unpaid balances, some unrelated to travel-related activities; he was truthful with his supervisor about his past corporate credit card payments when asked, and he accepted counseling and the disciplinary conditions imposed on him by his supervisor. MC ¶ 17(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," has some applicability to Applicant's circumstances.

Whether Applicant has learned enough from his past mistakes of his ignoring use and payment conditions on his corporate credit card to avert any recurrences is not fully certain. Although he has since repaid the account balance on the credit card in accordance with the terms and conditions set by his disciplinary agreement, it is still unclear whether enough time has passed to ensure he will not abuse imposed credit card restrictions in the future when placed in stressful circumstances. He remains subject to restricted travel conditions that limit him to travel advances in lieu of a corporate credit card, and his employer has not fully restored him to his original position before disciplinary conditions were imposed in 2009.

Evaluating Applicant from a whole-person perspective is aided by his documented proof of paying off his corporate credit card balance in accordance with the schedule he agreed to with his supervisor in 2009. His 15 years of active military service are worthy of considerable credit. Lessons learned from his military service could be expected to impress upon him the high standards of trust and reliability expected of him by his military and civilian employers alike.

When Applicant elected to misuse his corporate credit card on multiple occasions throughout 2009, he consciously compromised the high standards of trust and reliability imbued in him over the course of his 15 years of military service. Considered under these circumstances, his accumulation of large delinquencies and unrelated travel expenditures on his corporate credit card (albeit since repaid), while encouraging, are not enough to absolve him of any lingering doubts about his ability to avert mishandling of his employer's credit cards in the foreseeable future.

Taking into account all of the facts and circumstances surrounding Applicant's use of his corporate credit card to defray personal and travel-related expenses and the documented concrete steps he has taken to date to successfully repay the credit card

balance, it is still too soon to credit Applicant with mitigating security concerns related to his misuse of his corporate credit card while employed by his current employer. Unfavorable conclusions warrant with respect to subparagraphs 1.a, 1.c, and 1.d. Applicant is credited with giving honest answers to his employer about his corporate credit card payments, and favorable conclusions warrant with respect to subparagraph 1.b.

Financial issues related to repossession deficiency

Besides accumulating large debt balances on a corporate credit card issued to him by his corporate employer, Applicant accrued a large deficiency debt on a purchased vehicle he co-signed with W3. His co-signing a note to facilitate his wife's purchase of the BMW vehicle was one of several commitments he made to W3 in 2009 as they were contemplating separation.

By all accounts, Applicant obligated to assist W3 at a time when his financial resources were already beginning to diminish. Without more historical explanations for this major debt delinquency, it is difficult to find either extenuating circumstances or concrete repayment steps sufficient to mitigate security risks associated with his delinquent debt accrual.

Once he became aware of W3's defaults in her payment obligations on the vehicle Applicant co-signed for, Applicant consented to repossession of the vehicle and initiated suit against W3 to recoup his losses. With his reimbursement prospects very much in doubt, he has since entered into a repayment agreement with the lending firm which had written off the debt. Based on his repayment agreement with this lender, Applicant may take some advantage of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

When addressing repayment efforts generally, the Appeal Board has not required an applicant to establish "that he has paid off each and every debt listed in the SOR." See ISCR Case no. 07-06482 at 2-3 (App. Bd. May 21, 2008)(internal citations omitted). All that the Board has required is that the "applicant demonstrate he has a plan to resolve his financial problems and has taken significant actions to implement that plan." See *id.* In Applicant's case, he has demonstrated some tangible steps to satisfy his creditor 2.a debt delinquency. But he provided no proof of any earnest payments made in accordance with the agreement he reached with creditor 2.a. Quite conceivably, he will be able to make the regular monthly payments called for in his agreement with the collection agency for creditor 2.a, but it is by no means certain, given the modest remainder he has to work with every month. Without some payment track record with this creditor and its collection agent, he is not able to fully satisfy any of the pertinent mitigating conditions.

Based on a whole-person assessment, Applicant fails to surmount the judgment questions raised by his accumulation of delinquent debts over an extended period of time while he was for the most part fully employed. His military awards and commendations, while impressive, are not enough to overcome judgment risks

associated with his unresolved finances. On balance, Applicant has not shown sufficient tangible effort in addressing his debts to mitigate security concerns over his substantial debt accruals and demonstrate renewed control over his finances.

Taking into account all of the facts and circumstances surrounding Applicant's past debt accumulations, his current \$13,867 deficiency balance he has with his car lender, his military credits, and his meritorious endorsement, it is still too soon to make safe predictive judgments about Applicant's ability to safely manage his accounts, commensurate with established requirements for holding a security clearance. Unfavorable conclusions warrant with respect to the allegations covered by subparagraph 2.a.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE E (PERSONAL CONDUCT):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
GUIDELINE F (FINANCIAL CONSIDERATIONS):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

