DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 10-03732
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: Jason Perry, Esq.

03/05/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline E, personal conduct. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On October 15, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E. 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on November 16, 2012, and requested a hearing before an administrative judge. The case was assigned to me on January 3, 2013. DOHA issued a notice of hearing on January 17, 2013. I convened the hearing as

scheduled on February 8, 2013. The Government offered Exhibits (GE) 1 through 5, and they were admitted into evidence without objection. Applicant testified and offered Exhibits (AE) A through M, and they were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on February 21, 2013.

Findings of Fact

Applicant admitted SOR ¶ 1.a and denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 45 years old. He has a bachelor's degree and a master's degree in business administration (MBA). Next month he will be defending his dissertation for his Ph.D. He is divorced and has three children, ages 20, 16, and 15. He has worked for his present employer since May 2009. Before then, he worked for employer R from 2001 to 2009.[1]

Applicant was completing his MBA in 2001 when he was recruited to work for R. He was granted a secret security clearance around 2003 or 2004. Applicant's job with R required extensive travel all over the world and in some instances in harsh and dangerous environments. When Applicant traveled he was given a fixed per diem rate for the number of days he was on the road. He used the company credit card for his expenses. The company credit card arrangements were that R would send the credit card company the flat per diem rate to cover the expenses. If the traveler spent over the amount authorized then he or she had to pay that amount from their personal funds. If the traveler did not spend the total amount of the flat per diem then there would be a surplus on the traveler's account. The balance would accumulate, and then the credit card company had to reimburse the traveler, causing both R and the credit card company additional paperwork. Applicant credibly testified that he and his coworkers were told by their finance manager to "burn down" their credit card balances, meaning use the credit card for personal items, so the surplus balance would not have to be a reimbursement by the credit card company. The reimbursement usually took between three to six months. The reimbursement constituted the portion of per diem that was not spent by the traveler and which he or she was entitled to receive.[2]

In June 2005, there was a new human resource (HR) manager at the company who decided to change the policy of "burning down" balances. Applicant and others at the company received a letter from the HR manager advising them that an analysis of their credit card expenditures showed personal items had been charged to the company credit card. The HR manager issued a new policy that travelers could not use their company credit card for personal expenses.[3] Applicant testified he went back

[1] Tr. 21-25.

[2] Tr. 22, 26, 29-38, 72-74, 105-110.

[3] GE 5 at 2-3.

to the finance director for guidance because of the conflicting policy, and the finance director told him and other travelers that as long as the company was not actually paying for the personal expenses then the travelers could continue to "burn down" the balance owed to them.[4] Applicant explained that the practice of "burning down" the balance owed to them ceased when the company changed credit card companies and reimbursement was accomplished electronically.[5]

Applicant did not believe the letter he received was a derogatory letter that he needed to disclose in his security clearance application (SCA). Applicant received a second letter in July 2005 with the same information as the June 2005 letter with a list of personal expenses. Again, Applicant did not believe this was a derogatory letter that had to be disclosed on his SCA. He described the letters as form letters.[6]

At no time were Applicant's credit card privileges suspended or revoked while working for R. He was on the road 20 days out of each month and was constantly using his company credit card. He would submit his expense report with all of his expenditures. His expense claims would go through several tiers of review and at the time he never had any travel claim expenses returned to him as questionable or for explanation. He was never disciplined for questionable credit card use. I found his explanation that he was following the financial director's direction to "burn down" the balance of what was to be reimbursed to him to be credible. After he received the new guidance regarding use of the company credit card and the credit card company changed, he never received any other information from R about his company credit card use. Applicant admitted that he received the two letters advising him about the company's policy for credit card use. He denied this was a derogatory reflection on his employment.[7]

Applicant was promoted in July 2005, the same month he received the second letter from his company about the credit card use.[8] At his hearing, Applicant stated that he did not think he would have been promoted at that time if he had been misusing his company credit card.[9]

Applicant denied that in June 2007, he asked a fellow employee to falsify a required international travel approval form (SOR ¶1.b). Applicant explained he had to travel to a remote location and there was a new clerk who was to handle the authorization for his travel. The operations manager was required to review the request

[4] Tr. 29-38, 72-74, 105-110.

[5] Tr. 37-38, 105-110.

[6] Tr. 29-38, 105-110.

[7] Tr. 29-44, 72-74

[8] GE 5 at 43.

[9] Tr. 43-44.

and provide pre-travel authorization. The clerk was to forward Applicant's travel request to the operations manager. The trip request was flagged because Applicant's travel was routed through China. Applicant was advised that his travel could not be routed through China. Applicant's clerk did not know what to do, so Applicant told her not to worry about it. The clerk went to another person in the office and said she was uncomfortable with Applicant's response. The operations manager became angry and Applicant agreed to change his route so he was not going through China. Applicant disputes the memo (GE 5 page 58) from the clerk saying she was told by Applicant to not share his itinerary with anyone and to not tell anyone about the original travel plans. He admitted he told her not to worry about it. He believes she misinterpreted him. He stated by the end of that day, the matter was resolved and he never heard anything else about it, and he took his trip. It did not go through China.

Applicant was not advised that he did anything wrong concerning his travel, and his travel privileges were not suspended or revoked. He further explained that by 2007 he was traveling extensively. He estimated that he completed more than 100 travel claims when he worked for R. There is a June 29, 2007 memo titled "insubordination of direct orders to cancel travel." This memo is unsigned and it does not show who wrote it and what type of inquiry was conducted. There is no indication, statement, or documentation that shows that Applicant was confronted by anyone and given an opportunity to make a statement, provide an explanation, or refute any allegations. It was strictly an unsigned memo with a summary of interviews. There is no indication if any of the people interviewed reviewed the document to verify its accuracy.[10]

Applicant credibly testified that in 2008 he completed a SCA and was sponsored by R for a top secret security clearance, which was granted, and he was promoted on May 19, 2008. R never indicated during the investigation process that it had issues with Applicant's company credit card use or other integrity issues. After 2007, Applicant was not confronted with any company credit card issues.[11]

SOR ¶¶ 1.c and 1.i alleged that on October 2, 2008, R issued Applicant a written warning for exhibiting a pattern of disregard for R's policies and practices and removed him from a Supply Chain Management leadership role. The SOR also alleged that Applicant was untruthful in his response to interrogatories because he denied he was removed by R from a management role for any reason.[12]

Applicant explained that his office was a satellite office for R. The office was going through a lot of change because they had gone from a very small contract to a multi-billion dollar contract that required more oversight. In light of that, there was a time-card audit by the Defense Contracting Agency (DCA). Employees of R had been previously told to enter their work time in 40-hour increments. In early 2008, employees

[10] Tr. 45-59, 114, 148.

[11] Tr. 41-43, 57, 62; AE I, L.

[12] Tr. 59, 62, 110-111; GE 5 at 5.

were advised by DCA to enter "all" of their hours, even if their work hours exceeded 40 hours. Applicant submitted all of the hours he worked and began receiving overtime pay. A report was issued by DCA claiming Applicant was improperly charging overtime when he was not authorized to do so. During this period of time, Applicant was promoted to a different position in May 2008 and was unaware that he was no longer authorized overtime pay, but the system continued to pay him overtime.[13] He credibly testified that he was submitting the hours he actually worked because that is what he was told to do. He had never received overtime pay before but was entering his time as he had been instructed. His time card was reviewed by someone above him. He and others received a warning letter advising them that they were inappropriately receiving overtime pay.[14] He reimbursed his employer for the overtime pay that was wrongfully paid by having his employer offset the bonus he was going to receive during that period of time. Applicant stated that there were other employees that were at the same management level as him that experienced the same problem with the overtime pay issue, in that they received overtime pay, and they should not have.[15]

Applicant testified he was never removed from a management role or demoted. He explained that he was moved from a Supply Chain management role, where he supervised R employees to an individual contributor role, where he was supervising subcontractors. He viewed this as a lateral move. His employee fact sheet does not reflect any demotions.[16]

Applicant did not believe he was disciplined or reprimanded during the time he worked for R. He did not recall the October 2, 2008 letter. He credibly testified that he did not intentionally omit it from his SCA. When confronted with the letter he stated he considered it an administrative matter. He indicated that five or six other people that worked for R had the same issue arise regarding overtime pay. He stated these employees did not want to provide a letter of support for him for fear of retribution by R.[17]

In February or March 2009, Applicant told his local supervisor that he was searching for a new job. He had traveled from Iraq to Washington D.C. three times in one month and he was tired of traveling. The travel and time away from home affected his marriage. Applicant provided supporting documents to show he was interviewed for a new job on March 25, 2009. He had a second interview on April 3, 2009, and was offered the new job on April 14, 2009. After a short period of negotiations, Applicant accepted the job offer on April 27, 2009. Applicant told his supervisor around the same

[13] AE K.

[14] GE 5 at 5.

[15] Tr. 62-72, 118-129.

[16] Tr. 62-72, 125-129; GE 5 at 74; AE G.

[17] Tr. 62-72, 101-102, 129-132, 145-147.

time that he would be leaving R. He received a merit step increase from R on May 2, 2009.[18] He interpreted this increase to be akin to a promotion because it is based on performance and is not automatic. Applicant testified that he decided to submit his resignation to R on May 5, 2009. He contacted the president of the company who was in the Washington D.C. metropolitan area, on May 5, 2009, and told him he was resigning. The president told him he did not want him to quit and asked him to fly to Washington D.C. so they could discuss it. Applicant flew to Washington D.C. on May 5, 2009. On the morning of May 6, 2009, he explained to the president that he was tired of the travel and no longer wanted to work in the field. That morning the president tried to talk Applicant out of quitting. After visiting with the president in the morning, Applicant was asked to return in the afternoon. When he returned the president told him he had questions about Applicant's expenses over the past several years, and Applicant needed to stay around and resolve the issues. The president told him he owed $45,000 of unauthorized expenses. Applicant was upset. It was only after he told the president that he was resigning that he was confronted with allegations of unauthorized expenses. I found Applicant's testimony credible. Applicant submitted his written resignation on May 7, 2009.[19]

Applicant explained that while working for R he traveled over a million miles in two years and all of his travel claims were regularly reviewed at different levels within the organization. First, the local financial administrators reviewed each travel claim. Then it was reviewed by a supervisor. After that review, it went to R's expense management division in another city, where it would be checked. Once it was approved he would be reimbursed electronically. The company would pay the credit card directly. Applicant credibly testified that never once was an expense report sent back, and he was never disciplined or demoted for credit card abuse.[20]

Applicant stated that the credit card issue was never raised until after he submitted his resignation. He does not dispute that there could have been issues raised regarding his expenses, but they were not brought to his attention until he resigned. There were things he was authorized to purchase on the economy for employees of R who were deployed to a foreign country. These things might appear as personal items, but were not in fact. Applicant believes he was presented with these allegations because R wanted to have leverage with him to force him to sign a "non-compete" agreement. He was not contractually obligated to sign one. Applicant explained that he had procured a large contract for R and nurtured a network of people overseas that were comfortable working with him. These relationships were vital to accomplishing the job. This made Applicant a unique entity to complete the mission. The contract would remain with R after Applicant left, but Applicant had the relationships, which could not be duplicated. Applicant believed that R was concerned that if he left their employment, he might immediately return overseas and compete against R. Applicant did not want

[18] GE 5 at 74.

[19] Tr. 75-100, 131-140.

[20] Tr. 78-83.

any issues lingering when he left R and felt R would hound him at his new job, so he agreed to sign the two-year "non-compete" contract.[21]

Applicant stated he was told by R's HR person that if he signed the non-compete agreement that nobody would ever speak of it again, and the allegations would be gone. If he did not sign it then R would spend a lot of time having to hash it all out. Applicant stated that the HR person even threatened to contact Applicant's new employer. Applicant agreed to the term that stated he had $45,000 in excess expenses because the agreement stipulated that no information would be released to anyone, the debt would go away, and there would be no civil or criminal charges. Applicant stated that by signing the "non-compete" agreement he saw it as a way to put the whole thing behind him. R wanted Applicant to provide receipts from as far back as three or four years. Applicant stated he had already submitted the receipts when he completed his travel claims. He had a new job and he wanted to get started. Applicant believes R intentionally attempted to hurt his chance of obtaining a security clearance so he cannot compete against the company. His "non-compete" clause has expired.[22]

Applicant denied he left R because he was confronted about misusing the company credit card (SOR ¶ 1.h). He credibly testified that he previously had told his local supervisor of his intention to find a new job and subsequently accepted it. There is documentary evidence that supports Applicant not only had a job offer, but had accepted the job before R confronted him with alleged misconduct.[23] Applicant's employee fact sheet notes that he received a merit increase on May 2, 2009, and it lists he was terminated on May 9, 2009.[24]

The Joint Personnel Action System entries made regarding Applicant's alleged misuse of a credit card and violation of company policy were not entered until May 6, 2009; May 7, 2009; and August 19, 2009, reflecting they were made after Applicant resigned.[25]

The Government provided documents with credit card expenses from approximately 2006 through 2009 attributed to Applicant. R claims these were unauthorized expenditures by Applicant. Applicant was provided the list by R in September 2009. It is unclear why R did not address these issues at the time the expenditures were made and claimed.[26]

[21] 75-100, 131-146, 150-152..

[22] Tr. 83-100, 141-146.

[23] AE A.

[24] Tr. 151-152; GE 5 at 74.

[25] Tr. 110-114; GE 2.

[26] GE 5 at 8-40.

Applicant has been at his current job for almost four years. He has not had any problems while there. He has been promoted twice since working there. Recently his employer bid on a contract that competes with R. Applicant's two-year non-compete agreement has expired. Applicant's employer was awarded the contract. Applicant was the lead on helping to procure the contract. He believes his unique skills are important in fulfilling the terms of the contract.[27]

Applicant's coworkers and friends provided character letters. He is described as an exceptional leader and very trustworthy. His is dedicated to his work product and driven by loyalty and duty to the military. He is honest and professional. He has demonstrated the utmost integrity, and is charitable and ethical in all aspects of his personal and professional life.[28]

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

[27] Tr. 103-104.

[28] Tr. 103; AE A-F.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining 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 describes conditions that could raise a security concern and may be disqualifying. Four are potentially applicable:

> (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
>
> (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;
> (c) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination 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. . . (3) a pattern of dishonesty or rule violations. . . ; 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.

I have carefully considered Applicant's testimony and the all documents provided. I found Applicant's testimony credible, forthcoming, and consistent. I make the following specific findings to the SOR allegations and their applicability to the above disqualifying conditions.

SOR ¶¶ 1.a and 1.g allege in 2005 Applicant was issued at least two warning letters for charging personal expenses to his company credit card, and he failed to disclose this information on his September 29, 2009 SCA in Section 13C: Employment Record. That section asks if an applicant has received a "written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace."

Applicant received two letters from his employer in 2005 advising him "there appear to be charges of a personal nature on your account." It further advised him to "ensure that any/all monies owed on the card are paid in short order. In the future, please remember that the [credit card] which has been issued to you is for Company related use only."[29]

Applicant explained that he was told by the finance director that the flat per diem rate that was paid directly to the credit card company could be offset by personal expenses. I find these letters addressing personal expenses do not constitute the type of "written warnings" for misconduct in the workplace that were required to be disclosed in Applicant's SCA. I believe Applicant's explanation was reasonable based on what he was told. These letters were not of the nature that was required to be disclosed in Applicant's SCA. I find he did not intentionally fail to disclose them to hide this information from the government. The above disqualifying conditions do not apply to SOR ¶ 1.a. I find they also do not apply to SOR ¶ 1.g as it pertains to ¶ 1.a (as it pertains to ¶¶ 1.c and 1.d will be addressed below). I find in favor of Applicant on SOR ¶1.a.

SOR ¶ 1.b alleges in June 2007 it was determined that Applicant asked another R employee to falsify a required travel approval form. The only evidence to support this allegation is a June 29, 2007 memo titled "insubordination of direct orders to cancel travel." This memo is unsigned and it does state who conducted an inquiry and what type of inquiry was conducted. There is no indication, statement, or documentation that shows that Applicant was confronted by anyone and given an opportunity to make a

[29] GE 5 at pages 2-4.

statement, provide an explanation, or refute any allegations. It was strictly an unsigned memo with a summary of interviews. There is no information to verify if the people interviewed reviewed the document to verify its accuracy.

Applicant was unaware the memo existed, and it was never brought to his attention until he left R's employment and has now surfaced addressing security concerns. Applicant provided a reasonable explanation for what occurred regarding his official travel. If R believed Applicant had asked one of its employees to falsify a travel form it had a responsibility to address the matter at the time. No evidence was presented to show R had a concern until this memo surfaced six years later. Although the evidentiary standard at security clearance hearings is relatively low, there must at least be a threshold of authenticity and reliability. I find there is insufficient evidence to conclude Applicant asked an employee to falsify a report. I find in favor of Applicant on SOR ¶ 1.b.

SOR ¶¶ 1.c, 1.g, and 1.i alleged R issued Applicant a written warning for exhibiting a pattern of disregard for R's policies and practices and removed Applicant from a management role. It is also alleged that on August 29, 2011, in response to interrogatories, Applicant claimed he was never removed by R from a management role for any reason. Applicant signed a "Last Chance-Final Written Warning" letter on October 6, 2008, addressing concerns about his submission of timecards to receive overtime pay which he was not entitled to receive. The letter noted Applicant was not given approval by his manager for overtime pay. It also noted there was a conflict of interest because Applicant was in charge of his own budget. Applicant disputes this fact. The letter alleges that Applicant made inconsistent statements about the overtime pay charges. It informed him that he exhibited a pattern of disregard for R's policies and practices and the leadership requirements of his role. It informed him he failed the integrity component of the R leadership model. Applicant was required to repay the overtime pay he received, which he did. At his hearing, Applicant provided an explanation as to why he submitted for overtime pay and the circumstances.

The letter also informed Applicant that: "You will no longer function in a Supply Chain Management leadership role. Your new role is an individual contributor with local business development responsibilities only."[30]

Applicant disputes that he was removed from a management role. He was removed from the Supply Chain Management leadership role. Applicant viewed his move to an individual contributor role with local business development responsibilities as a lateral move because he was still supervising people. This may be a matter of internal management semantics and interpretation. The evidence does not reflect that Applicant was demoted. It is clear that Applicant received an official written warning letter regarding his conduct. This is the type of letter Applicant had a duty to report on his SCA. Applicant signed the letter and was aware of its contents. The nature of the letter is clear and addresses Applicant's disregard for R's policies and practices.

[30] GE 5 at pages 5-7.

Applicant denied in response to Government interrogatories that he was removed from a management role. It is unclear and at least open for interpretation that Applicant's removal from the Supply Chain Management leadership role to an individual contributor role was a demotion. There is insufficient evidence to conclude that Applicant's interpretation was a false statement.

I find the disqualifying conditions apply to SOR ¶ 1.c and ¶ 1.g as it pertains to SOR ¶ 1.c. I find there is insufficient evidence to conclude Applicant knowingly made a false statement in his interrogatories when he denied being removed from a management role at R. Therefore, I find in favor of Applicant on SOR ¶ 1.i.

SOR ¶¶ 1.d and 1.e allege that in May 2009 R determined that Applicant knowingly violated R's policies by misusing R's company credit card, that Applicant signed a Separation Agreement acknowledging he was indebted to R in excess of $45,000 for non-business related expenses, and that he charged personal items to his company credit card to be reimbursed as legitimate business expenses. It is also alleged that after R confronted Applicant with the company credit card issues in May 2009, Applicant resigned, and he is not eligible for re-employment. SOR ¶ 1.f alleges that Applicant was required to disclose in his SCA that he resigned from R under unfavorable circumstances. SOR ¶ 1.h alleges that a statement made by Applicant to a Government investigator on February 26, 2010, was untruthful. It specifically stated that Applicant told the investigator that he left R because he was offered a better job with another company whereas it is alleged Applicant left R because he was confronted about his misuse of R's company credit card.

The evidence is clear that Applicant had been looking for a new job prior to May 6, 2009. He was offered the new job in April and accepted the offer on April 27, 2009. He advised R on May 5, 2009, he was resigning. Applicant credibly testified that it was the President of R that asked him to fly to Washington D.C. to discuss his employment with the company. There is no evidence to suggest that R had planned on terminating Applicant before that date. There is no evidence that R had recently addressed or showed concern about Applicant's company credit card use, other than the two letters in 2005. Besides the October 6, 2008, warning letter to Applicant regarding his overtime submission, there is no evidence that R was currently pursuing any issue regarding Applicant's work or any derogatory matters. To the contrary, R's own "employee fact sheet" shows Applicant received a merit increase on May 2, 2009, four days before R terminated him.[31] R's documents are all dated after the date Applicant told R he was resigning. Applicant's official resignation letter is May 7, 2009. Perhaps R had legitimate issues with Applicant's credit card use, but to raise them the day Applicant decided to resign is disingenuous and suspect. R also sponsored Applicant for his security clearance and renewed its endorsement when it sponsored him for it to be upgraded to a Top Secret clearance. If R had issues with Applicant's integrity, it had a duty to not continue his sponsorship for a security clearance and later for a Top Secret security clearance.

[31] GE 5 at page 74.

The evidence supports that Applicant was valuable to R as is shown by his repeated promotions, pay raises, and his involvement in procuring a new billion dollar contract. The timing of R's allegations suggest it used Applicant's credit card expenditures as leverage to have Applicant sign a non-compete Separation Agreement that Applicant was not required to sign. Applicant was presented with the Separation Agreement that included allegations of unauthorized personal expenses. If he failed to sign it, it was obvious that Applicant would be hounded by the allegations as he started his new job. The timing of R's allegations and complaints are suspicious. If R was concerned about Applicant's credit card expenses, dating back from 2006, why did it wait until the day Applicant resigned, four days after R gave Applicant a merit increase, to provide him a voluminous list of alleged questionable charges? Applicant believes that R is attempting to prevent him from obtaining a security clearance so he cannot compete with R now that the two-year non-compete Separation Agreement has expired. It is not within my purview to resolve these queries, however, there is insufficient evidence to conclude Applicant misused his company credit card and failed to disclose these matters on his SCA.

There were no witnesses from R that testified regarding these allegations or that provided evidence that contradicts that provided by Applicant. I have considered R's documents. I find that there is insufficient evidence to support the application of the above disqualifying conditions for SOR ¶¶ 1.d, 1.e, 1.f, and 1.g as it applies to SOR ¶1.d. I also find there is insufficient evidence to support the application of the above disqualifying conditions for SOR ¶ 1.h.

I find there is sufficient evidence to support the above disqualifying conditions apply to SOR ¶¶ 1.c and 1.g as it pertains to SOR ¶ 1.c, and they are discussed below. All of the other SOR allegations I find in favor of Applicant.

I have considered all of the personal conduct mitigating conditions under AG ¶ 17. The following is potentially applicable:

> (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant received a letter of warning on October 2, 2008, that he should have disclosed on his SCA. The letter was signed by Applicant. It is clearly titled a warning letter and advised Applicant of the ramifications if he failed to adhere to the company's policies. Applicant continued to be promoted by R after receiving the letter. It has been more than four years since Applicant received the letter. Having considered all of the evidence, I find that the offense is minor and a sufficient period of time has elapsed since the letter was written. Applicant's failure to disclose the information on his 2009 SCA is a concern. I found Applicant's testimony credible and believable. I do not believe he deliberately was attempting to conceal the warning letter, but believe his interpretation was wrong. It was more than an administrative matter. It clearly was a

warning letter. Applicant disputes issues regarding the contents of the letter, but that is not within the scope of this process. I find there were unique circumstances in the specific details of how Applicant left his job with R that may have had a factor in failing to disclose this information. I conclude so much time has passed, the behavior is infrequent and occurred under unique circumstances, such that they are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, and good judgment. I find Applicant mitigated the security concerns regarding the remaining SOR allegations.

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 relevant 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a highly educated, 45-year-old man. He was routinely promoted over the years and is considered an exceptional worker and trustworthy person. After he resigned from his job with R, allegations surfaced regarding different areas of his employment. I did not find most of these allegations credible, but did find he failed to disclose a warning letter he received in 2008. He has an exemplary employment record and it is clear his departure from R was contentious. I believe Applicant has put these matters behind him. Applicant has successfully mitigated all of the security concerns that were raised. Overall the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant successfully mitigated the security concerns arising under the personal conduct guideline.

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
Subparagraphs 1.a-1.i:	For Applicant

Conclusion

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

_____
Carol G. Ricciardello
Administrative Judge