



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



In the matter of:	)	
	)	
XXXXXXXXXXXX, XXXXX	)	ISCR Case No. 10-10786
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard A. Stevens, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

05/31/2012

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant’s home mortgage of about \$340,000 has been delinquent for at least three years, resulting in a past-due amount of about \$129,000. Although Applicant or his family or both have continued to live in their residence, they have not made any payments to the mortgage lender for at least three years. In addition, Applicant has a charged-off credit card debt in the amount of \$2,979, which has been delinquent since 2007. In 2010, he intentionally understated his culpability in some criminal offenses to an investigator from the Office of Personnel Management (OPM). Personal conduct and financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 3, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF-86). On June 3, 2011, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guidelines E (personal conduct) and F (financial considerations).<sup>1</sup> The SOR detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant, deny, continue, or revoke a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be denied, granted, continued, or revoked.

On August 11, 2011, Applicant responded to the SOR and requested a hearing. On March 9, 2012, Department Counsel was ready to proceed on Applicant's case. On March 28, 2012, DOHA assigned Applicant's case to me. On April 10, 2012, DOHA issued a hearing notice, setting the hearing for May 9, 2012. (Tr. 7) Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered 10 exhibits, and Applicant offered 12 exhibits. (Tr. 16-19; GE 1-10; AE A-L) There were no objections, and I admitted GE 1-10 and AE A-L. (Tr. 18-19) On May 17, 2012, I received the transcript of the hearing. I held the record open until May 18, 2012, to provide Applicant an opportunity to provide additional documentation. (Tr. 60-61) Applicant provided eight post-hearing documents, which were admitted without objection. (AE M-T)

### **Findings of Fact<sup>2</sup>**

In his Answer to the SOR, Applicant admitted the conduct in SOR ¶¶ 1.a, 2.b, and 2.c with explanations. He also explained why he denied the other SOR allegations. His admissions are accepted as findings of fact.

Applicant is a 44-year-old information-technology specialist for a defense contractor. (Tr. 21; GE 1) He graduated from high school in 1985. (GE 1) He married in 1991, and he was divorced in 1993. (Tr. 58; GE 1) His first spouse passed away in 2004. (GE 1) He remarried in 1997, and he was divorced in May 2010. (Tr. 34-35; AE O) His divorce proceedings took two years (2008-2010) and were contentious. (Tr. 21) Applicant is responsible for the debts in his name, and his spouse is responsible for the debts in her name. (Tr. 45) He has two stepchildren and four children. (Tr. 21) His children are ages 13, 14, 18, and 20. (Tr. 32, 37, 58-59) His step children are ages 16 and 20. (Tr. 33)

Applicant served his country in a variety of overseas assignments from 2001 to 2011. In 2001, he worked in Kosovo; in 2002, in Kuwait; from 2003 to 2006, in Iraq; and from 2008 to December 2011, in Iraq. (Tr. 22, 33-34) Typically, he was deployed for 10 months and home for two months. (Tr. 37)

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<sup>1</sup>Department Counsel moved to withdraw SOR allegation 1.b. (Tr. 9) Applicant did not object, and I granted Department Counsel's motion. (Tr. 9-10)

<sup>2</sup>Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

## Personal Conduct

In 1997, Applicant was married, and he was having financial problems. (Tr. 29, 55) Applicant was a staff sergeant (E-6), and his spouse was a sergeant (E-5). (Tr. 55) According to the Criminal Investigation Division (CID) report of investigation (ROI), in July 1997, the victim of one of Applicant's thefts of a credit card noticed three unauthorized withdrawals on his card. The victim of the theft went to the mailroom and asked Applicant for information about theft of his cards. Applicant asked for the victim's phone number so that he could call him about the theft, if he found any information. Later, Applicant approached the victim and asked, "What if I told you I could get you[r] money back?" The victim reported the conversation with Applicant to the military police and the CID. (GE 4, CID ROI at para. 1.1) The victim introduced an undercover CID agent to Applicant, and Applicant said he could get the stolen money from the individual who stole the victim's credit card. Applicant arranged a meeting and reimbursed the victim for the theft, and Applicant said he "took care of" the person that stole the credit card. (GE 4, CID ROI at para. 2) The CID subsequently questioned Applicant about four thefts from the mailroom (three credit cards and one government check), and he admitted the four thefts. (GE 4, CID ROI at paras. 3, 6)

Applicant was convicted at a general court-martial of larceny and forgery, in violation of Articles 121 and 123, 10 U.S.C. §§ 921 and 923. (SOR ¶ 1.a)<sup>3</sup> He was sentenced to a bad-conduct discharge, reduction to private (E-1), and a \$500 fine. (SOR ¶ 1.a; GE 5, Commander's Report of Disciplinary Action)

In February 2006, while working as a defense contractor, Applicant entered a military camp with alcohol in his vehicle, in violation of General Order Number 1A, dated December 19, 2000. (SOR ¶ 1.c) He said he had just arrived at the airport, and the vehicle that picked him up had alcohol in it. (Tr. 30) Applicant was the driver of the vehicle when he went through the gate and his vehicle was searched. He said he was unaware of the alcohol in the vehicle. (Tr. 30)

On November 3, 2009, Applicant disclosed on his SF-86 that he received a bad-conduct discharge for stealing. (GE 1) However, he did not answer "Yes" when asked in Section 22c, "Have you EVER been charged with any felony offense? (*Include those under Uniform Code of Military Justice*)." (emphasis in original; GE 1)

On June 7, 2010, an OPM investigator interviewed Applicant about his theft of mail; forgery of documents; use of stolen credit cards to obtain cash, goods, and services; and court-martial conviction.<sup>4</sup> Applicant told the OPM investigator that he stole two credit cards while serving as a mail clerk; he used one of the credit cards to withdraw \$400 from a bank ATM; and denied that he used the other credit card. (AE A

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<sup>3</sup>The file does not contain the charge sheet, promulgating order, result of trial, and other documents.

<sup>4</sup>This paragraph addresses the concern raised in SOR ¶ 1.d. Applicant agreed that the OPM summary of interview was accurate. (Tr. 51-52; GE 2 at 3)

at 3) He said he admitted the theft to one of the victims of the theft. He said that one day after he used the stolen credit card, the victim of the theft came to the mail room and asked Applicant whether he had seen the victim's mail. (AE A at 3) Applicant told the victim about stealing his credit card and using it. (AE A at 3) The victim informed the unit commander, and his admission to the theft was passed up the chain of command. (AE A at 3) Applicant said the OPM investigator asked him how many credit cards he stole, and the amount of money he stole. (Tr. 53) He told the investigator that he did not know how many credit cards he stole, or the amount of the larcenies obtained with the stolen credit cards. (Tr. 53) Later, he said the OPM investigator did not ask him how many cards he stole, or how many people he stole from. (Tr. 53) The investigator's focus was on the amount of money he stole. (Tr. 53)

Actually, Applicant stole three credit cards from three separate victims; he illegally used all three credit cards, and made unauthorized purchases totaling \$1,638.37. He admitted to the offense after being confronted by a CID agent. He initially attempted to conceal his role in the theft of the credit cards by indicating he knew the person who committed the theft and would take care of him. (Tr. 54) He insisted that he did reveal the theft to one of the victims. (Tr. 55) Applicant denied that he intentionally attempted to mislead the OPM investigator. (Tr. 31) He did not have the documentation about his 1998 case with him for the interview. (Tr. 31)

## **Financial Considerations**

In 1998 or 1999, Applicant filed for bankruptcy. (Tr. 63)<sup>5</sup> Applicant's SOR alleges eight delinquent debts, totaling \$110,957 as follows:

a. 2007 judgment by a window company of \$6,854—PAID. Applicant paid \$1,000 per month, and he resolved this debt. (Tr. 23-24) He provided a May 10, 2012 letter from the creditor indicating the balance due was zero. (AE P) His May 10, 2012, credit report indicates this debt was paid. (AE Q at 20, 25);

b. Charged-off credit card debt of \$2,979—UNRESOLVED. Applicant said he is attempting to establish a payment plan with the creditor; however, he does not have any documentation about the payment plan. (Tr. 24) He had a corporate credit card that he

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<sup>5</sup>The SOR did not allege that Applicant filed for bankruptcy in 1998 or 1999 or that he failed to fully disclose his court-martial charges and conviction on his 2009 SF-86. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have decided not to consider the non-SOR-alleged misconduct for any purpose because the surrounding circumstances were not fully developed at his hearing.

was supposed to use for expenses, such as travel. (Tr. 40) He resigned from the job for other employment, and he expected his employer to pay the credit-card debt. (Tr. 41) He asked his corporate employer to pay for the credit card; however, the corporation declined to pay the debt, asserting it was not their responsibility. (Tr. 41);

c. Home mortgage in foreclosure of \$341,500 with delinquent interest of \$72,254—DELINQUENT. The original purchase price of the home in 2004 was \$311,000. (Tr. 47) Applicant made a \$30,000 down payment. (Tr. 48) In 2007, he paid \$45,000 in an attempt to obtain a loan modification; however, it was unsuccessful and his mortgage continued to be delinquent. (Tr. 63-64)<sup>6</sup> He said the last payment was made on his mortgage in 2007. (Tr. 45-46, 64) While Applicant was in Iraq, his spouse stopped making payments on their residence, and it went into foreclosure. (Tr. 25) He currently lives in the home. (Tr. 45) He or his family or both have been living in his residence rent free since 2007. (Tr. 47, 59-60) He unsuccessfully attempted to obtain a loan modification. (Tr. 45) Now he is seeking a short sale of the residence. (Tr. 45, 47; AE N) The mortgage holder has offered to cooperate with the short sale. (AE N) The home has not been advertised for sale. (Tr. 48) The home is solely in Applicant's name. (Tr. 49) His May 10, 2012 credit report shows the amount past due as \$129,008 and foreclosure process started; however, his lender is stopping the foreclosure if the short sale process is chosen. (AE Q at 8, 16-17, 29);

d. Credit card collection account of \$12,265—PAID. Applicant said he paid this debt. (Tr. 25) This debt does is not listed on his May 10, 2012 credit report. (AE Q);

e. Delinquent telecommunications debt of \$311—DISPUTED. Applicant said he disputed this debt, and it is not listed on his May 10, 2012 credit report. (Tr. 26; AE Q);

f. Child support debt to State A of \$4,596—PAID. Applicant's children living in State A are 18 years and 20 years old. (Tr. 26, 42-43) He stopped making his child support payments when he was unemployed in 2007, which caused them to become delinquent. (Tr. 27) Applicant provided documentation establishing this debt is paid. (Tr. 26-27, 43-44; AE R-T)

g. Bank debt of \$3,662—PAID. Applicant said this debt was paid. (Tr. 28) His May 10, 2012, credit report indicates this debt was paid, and the balance is zero. (AE Q at 3); and

h. Delinquent debt of \$8,036—DISPUTED. Applicant disputed this debt, and it is not on his May 10, 2012 credit report. (Tr. 28-29, 44; AE Q).

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<sup>6</sup>He testified the \$45,000 was paid in \$4,000 increments, and they were insufficient to bring the mortgage to current status. (Tr. 65) It was unclear when the most recent payment to his mortgage account was paid; however, it is clear it was at least three years ago. (Tr. 65) Applicant said the original mortgage amount was \$311,000. The mortgage amount apparently was increased on his credit report to \$341,500 at some point. The amount owed to his mortgage creditor continues to be substantial.

Applicant's spouse maintained their finances while he was overseas from 2001 until his marriage deteriorated. (Tr. 22) From 2001 to 2010, Applicant averaged annual gross income of about \$110,000. (Tr. 38) In the last year, both of Applicant's parents and his brother passed away. (Tr. 56) Applicant paid about \$10,000 towards the three funerals and burials, and \$2,700 for his travel from overseas. (Tr. 56-57) Applicant is currently unemployed; however, he is receiving unemployment compensation of \$653 per week. (Tr. 60-61) He provided a budget; however, the income in his budget was based on his unemployment compensation and not on his income while employed by a DoD contractor. (AE C)

Applicant has held a security clearance since 1985. (Tr. 62) There is no evidence of compromise of classified information. Applicant's employer will reinstate him if his access to classified information is not revoked. (Tr. 61)

### **Character Evidence**

When Applicant was on active duty, he received four awards of the Army Good Conduct Medal (GCM), six awards of the Army Achievement Medal (AAM), and one award of the Army Commendation Medal (ARCOM). (AE G, L) He completed various Army training courses and received several Army certificates of achievement. (AE H) He served in Southwest Asia during Operation Desert Shield/Storm as a sergeant in a combat engineer unit. (AE H) He completed the Army's Primary Leadership Development Course, the Army's Basic Noncommissioned Officer Course, and numerous Army correspondence courses. (AE I, J, K) He earned numerous certificates for logistics and communications-related courses. (AE I, J, K)

Applicant received several certificates of appreciation for service in Iraq from 2008 to 2010: an undated certificate for service in Iraq from November 2008 to March 2009; a dated certificate December 2009 for his service in Iraq; an undated certificate for his service in Iraq from May 2009 to January 2010; and a dated certificate September 16, 2009 for his service in Iraq. (AE B at 10-12, 14) He received a citation from an Air Force Major General for his outstanding performance of duty in Iraq from July through November 2009. (AE B at 13) On November 4, 2009, Applicant received a \$500 achievement award for his contributions towards meeting mission accomplishment. (AE B at 15) His performance evaluations showed excellent performance as a DoD contractor employee. (AE D-E) Applicant has substantial experience as a specialist in the area of information technology and management. (AE F)

Applicant wants to retain his security clearance so that he can return to service in combat areas such as Iraq or Afghanistan on behalf of the U.S. Government. (Tr. 32)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v.*

*Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No.

02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concern is under Guidelines E (personal conduct) and F (financial considerations).

#### **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 four conditions that could raise a security concern and may be disqualifying in this case:

(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 in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior . . . ; and (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, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

AG ¶ 16(b) applies. On June 7, 2010, Applicant intentionally understated his culpability to an OPM investigator, when he described his theft of mail material (credit cards) and his use of those stolen credit cards to obtain goods, services, and cash. He understated the number of credit cards stolen, and the amount of cash, goods, and services stolen using the credit cards.

AG ¶ 16(e)(1) applies because his intentional understatement of his culpability in relation to his court-martial, and the underlying criminal conduct in 1997 that resulted in his court-martial conviction, create a vulnerability to exploitation, manipulation, or duress, and such conduct adversely affects Applicant's professional standing as an employee of a Department of Defense contractor.

AG ¶¶ 16(c) and 16(d) do not apply. As indicated under the financial considerations guideline, *infra*, there is credible adverse information that is sufficient for an adverse determination under Guideline F. His misleading statement to an OPM investigator in 2010 is sufficient for an adverse security determination under Guideline E. All of his relevant security-related conduct is covered under various Guidelines. There is substantial evidence under Guideline F and AG ¶¶ 16(b) and 16(e)(1), and further inquiry about the applicability of mitigating conditions is required.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

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

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the

stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions apply to all of the disqualifying conditions. However, AG ¶ 16(e)(1) is mitigated by AG ¶ 17(e) because his court-martial offenses are documented in his security records and there is no reason for him to continue to attempt to conceal the scope of his criminal conduct. The disclosure of the court-martial misconduct has eliminated his vulnerability to exploitation, manipulation, or duress. I do not believe that anyone could use Applicant's history of criminal conduct or financial problems to coerce him into compromising classified information.

The allegation in SOR ¶ 1.c that Applicant carried alcohol into a camp in Iraq is unsubstantiated because there is insufficient evidence that he knew of the presence of alcohol in the vehicle he was driving. SOR ¶ 1.c is mitigated under AG ¶ 17(f).

In conclusion, SOR ¶¶ 1.a and 1.d are found against Applicant. His theft of mail and use of stolen credit cards to steal goods and services in 1997 are serious, felony-level offenses. They would be mitigated by the passage of time, except they must be considered in conjunction with his misconduct in 2010. He intentionally understated the underlying conduct resulting in the court-martial charges to an OPM investigator in 2010. His intentional attempt to mislead the OPM investigator in 2010 is recent, serious, and not mitigated.

## **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in his SF-86, credit reports, his SOR response, and his statement at his hearing.

Applicant’s SOR alleges eight delinquent debts, totaling \$110,957. Two large debts remain unresolved. Applicant’s home mortgage of about \$340,000 has been delinquent for at least three years. This home is solely in Applicant’s name. His May 10, 2012 credit report shows the amount past due as \$129,008. He has not made any payments to the mortgage lender for at least three years. Applicant has a charged-off credit card debt in the amount of \$2,979, which has been delinquent since 2007. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant's conduct in resolving his debts does not warrant full application of any mitigating conditions to all of his debts. However, he receives some credit under §§ 20(a), 20(b), and 20(d)<sup>7</sup> and 20(e). He paid, settled, disputed, or satisfied six debts, and they are no longer listed as delinquent on his current credit report.

Unemployment, three deaths in his family, divorce, and separation were circumstances largely beyond Applicant's control that adversely affected his finances. Applicant acted responsibly and made good progress resolving six of eight delinquent SOR debts. He maintained contact with his creditors, established payment plans, and avoided additional delinquent debt.

Applicant did not act responsibly in regard to two delinquent debts. He said that in 2007, he attempted to bring his mortgage to current status. He did not make any payments to the mortgage company for several years and accrued over \$120,000 in delinquent charges. In 2007, he incurred almost \$3,000 in delinquent charges on his corporate credit card. He left employment with that corporation and never paid his credit card bill. Over the last several years, he has averaged about \$110,000 in gross income. He had the means to make some payments on his house.<sup>8</sup> Applicant did not make any payments to address these two delinquent SOR debts for at least three years. Applicant had the burden of establishing that he acted responsibly with regard to these two debts, and he did not do so.

Although Applicant did not receive formal financial counseling, he did generate a budget or personal financial statement. He understands how to establish his financial responsibility and eliminate delinquent debt.

In sum, Applicant fell behind on his debts because of unemployment, three deaths in his family, divorce, and separation, and these were circumstances largely beyond Applicant's control. He made progress and resolved or successfully disputed six of his delinquent debts. Applicant, his children, or Applicant and his children lived in his residence for the last three years, and they did not pay anything on their mortgage. He

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<sup>7</sup>The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>8</sup>Of course, Applicant has significant financial responsibilities, as he supports his four children, who are under the age of 18.

is now waiting for a possible short sale to resolve his mortgage debt. He has a corporate-sponsored credit card that has been unpaid for more than four years. It is likely that his financial problems will recur. His financial problem is not being resolved, and it is not under control. His efforts are not sufficient to fully mitigate financial considerations security concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

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. AG ¶ 2(c). I have incorporated my comments under Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There are some facts supporting mitigation of security concerns under the whole-person concept; however, they are insufficient to fully mitigate security concerns. He is 44 years old and sufficiently mature to comply with security requirements. He served honorably in the U.S. Army from 1985 to 1997, receiving four awards of the Army GCM, six awards of the AAM, and one award of the ARCOM. He successfully completed various training courses and received several certificates of achievement. He served in Southwest Asia during Operation Desert Shield/Storm. He earned numerous certificates for logistics and communications-related courses, and he received several certificates of appreciation lauding his service to his employer and the DoD in Iraq from 2008 to 2010. In 2009, he received a \$500 achievement award. His performance evaluations showed excellent performance as a DoD contractor employee. He has substantial experience as a specialist in the areas of information technology and management.

Applicant fell behind on his debts because of unemployment, three deaths in his family, divorce, and separation, and these circumstances were largely beyond Applicant's control. He resolved or successfully disputed six of his delinquent debts. Applicant is sufficiently intelligent to understand and establish his financial responsibility. His personnel records, including numerous certificates and evaluations, establish that he is a dedicated, reliable, loyal, and trustworthy employee. He is knowledgeable,

patriotic, and professional, and he made substantial contributions to his employer and to the Army from 1985 to 1997. He wanted his clearance to be reinstated so that he could return to service in combat areas such as Iraq or Afghanistan.

The financial circumstances and personal conduct concerns supporting revocation of Applicant's security clearance are more significant than the factors weighing towards continuation of his access to classified information. His home mortgage of about \$340,000 has been delinquent for at least three years. His 2012 credit report shows the amount past due as \$129,008. He has not made any payments to the mortgage lender for at least three years. He also has a charged-off credit card debt in the amount of \$2,979, which has been delinquent since 2007. He did not establish that he was unable to do more to resolve these two debts. He failed to provide sufficient evidence of progress resolving these two delinquent SOR debts to establish his financial responsibility. In 1997, Applicant stole credit cards from three soldiers, which he used to steal goods, cash, and services. He was convicted at general court-martial of larceny and forgery, which are serious, felony-level offenses. He received a bad-conduct discharge. In 2010, he intentionally understated to an OPM investigator the underlying conduct resulting in the court-martial charges. He lied to the OPM investigator about how the CID discovered he was the perpetrator of the larcenies and forgeries, and the amount of the thefts and the number of victims of theft. His intentional attempt to mislead the OPM investigator in 2010 is recent, serious, and not mitigated.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not fully mitigated the personal conduct and financial consideration concerns.

### **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:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant (Withdrawn)
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2, Guideline F:	Against Applicant
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b and 1.c:	Against Applicant
Subparagraphs 1.d to 1.h:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ROBERT J. TUIDER  
Administrative Judge