



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



In the matter of:)	
)	
)	ISCR Case No. 11-09615
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

06/21/2013

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has settled about \$44,284 in delinquent consumer credit debt that was incurred during his marriage to his ex-wife. He is currently paying \$200 per month toward another \$11,512 in marital debt that his ex-wife was supposed to pay under their property settlement. Lacking the funds to furnish an apartment for himself during his divorce, Applicant made several unauthorized purchases on an employer-sponsored credit card in 2010, in knowing violation of company policy. His efforts to resolve his debts mitigate the concerns of financial overextension, but security concerns persist because of his misuse of the corporate credit card for his own benefit. Clearance denied.

Statement of the Case

On November 20, 2012, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct), and explaining why it was unable to find it clearly consistent with the national

interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on December 7, 2012, and he requested a hearing before the Defense Office of Hearings and Appeals (DOHA). On February 8, 2013, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Scheduling of the hearing was delayed pending guidance related to sequestration budget issues. On April 11, 2013, I issued a notice scheduling a hearing for April 29, 2013.

I convened the hearing as scheduled. Five Government exhibits (GEs 1-5) and seven Applicant exhibits (AEs A-G) were admitted without objection. Applicant testified, as reflected in a transcript (Tr.) received on May 3, 2013.

I held the record open after the hearing. The Government was granted two weeks to submit a credit report dated April 23, 2013. The document was received on May 13, 2013, and accepted into the record as GE 6 without objection. Applicant was granted three weeks after the hearing to submit additional exhibits. On May 21, 2013, Applicant submitted three documents. On May 23, 2013, Department Counsel indicated that the Government did not object to their inclusion in the record. Accordingly, the documents were marked and admitted as AEs H-J.

Findings of Fact

The SOR alleges under Guideline F that as of November 20, 2012, Applicant owed four collection debts totaling \$30,209 (SOR 1.a, 1.b, 1.d, 1.e) and a charged-off debt of \$838 (SOR 1.c). In addition, under both Guideline F (SOR 1.f) and Guideline E (SOR 2.a) Applicant allegedly intentionally misused a corporate credit card to purchase personal items, knowing that such use violated company policy. Applicant denied the debt information alleged in SOR 1.a, 1.b, 1.d, and 1.e. He admitted the debt in SOR 1.c and the misuse of his employer-sponsored credit card, as alleged in SOR 1.f and 2.a. At the hearing, the Government stipulated that the debt in SOR 1.a had been paid. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 49-year-old engineering manager with an associate's degree in mechanical design. In 1998, he began working for his employer as a contractor. In January 2000, he became a full-time permanent employee of the defense contractor. Applicant has held a secret security clearance since 2000. (GEs 1, 2; Tr. 42-43.) Applicant does not access classified information on a daily basis, but he needs the clearance for business duty on military installations. (Tr. 55.)

Applicant and his ex-wife were married from June 1998 to December 2010. Their two daughters were born in June 2001 and June 2003. (GEs 1, 2; AE C.) During their marriage, Applicant and his ex-wife relied heavily on consumer credit for purchases, although they paid most of his credit obligations on time. Applicant was late 30 days in his car payment on five occasions before he paid off his \$27,124 loan in October 2009. Applicant also made no payments on his revolving charge account debt for patio furniture after April 2009, and a balance around \$5,769.50 was charged off and placed for collection. (GEs 1, 3, 5.)

In late 2009, Applicant's ex-wife served him with divorce papers. In April 2010, Applicant moved out of the marital home into an apartment. Money was an issue for Applicant at the time. Applicant decided to use his employer-sponsored credit card to purchase furniture and other household items needed to make "a normal living place" for his children when they spent time with him.¹ Over a span of several months, Applicant made between \$3,000 and \$4,000 in unauthorized charges, for a bedroom set for his daughters and household items (dishes, pans, etc.), on the corporate account. Account terms required that he pay the outstanding balance in full when billed, but he made monthly payments of \$400 to \$500, which were less than the full balance. (Tr. 61-62.) Applicant did not set out to violate corporate policy (AE F), but he was aware that it was contrary to company policy at the time to use the employer-sponsored credit card for non-business purchases. For the previous five or six years, he had traveled extensively for his employer on the corporate card with no violations. (GE 3; Tr. 45-48.) Sometime between October 2010 and January 2011, Applicant was confronted by human resources and his engineering manager about his unauthorized use of the account. Applicant testified that they sympathized with his situation, but in accord with company protocol, they issued him a written warning in January 2011. (GE 1; AE F; Tr. 45.) Applicant "shamefully admits" his unauthorized use of the corporate credit card. (AE F.)

Applicant and his ex-wife entered into a property settlement agreement on December 14, 2010. Both agreed to pay their individual credit accounts not specifically listed. Applicant agreed to pay \$923 biweekly in child support. In addition, Applicant assumed sole repayment responsibility for a bank credit card debt (not in SOR)² and for three smaller debts totaling \$1,078. His ex-wife accepted repayment responsibility for a

¹ Applicant explained his decision to use the corporate credit card for personal reasons, as follows:

The [divorce] process was mentally draining and emotionally abusive. It clouded my judgment and decision-making for many months during [the] 2009 [sic] year. I desperately needed to find another place to live that would accommodate my two daughters and me.

I shamefully admit, I missed [sic] used my corporate credit to acquire items for my new residence such as, furniture, bedding, kitchen materials and household supplies. It was not my intention to knowingly violate corporate policy. It was a means of retreat to help gain my sanity back during this life-altering event. (AE F.)

² Applicant's May 2011 credit report revealed a credit card account closed by the bank and placed for collection in November 2009 in the amount of \$25,000. As of May 2011, the balance was reportedly \$27,066. (GE 5.)

\$4,003.45 department store credit card balance; an \$11,512.19 home improvement store debt (SOR 1.e);³ a \$5,824 retail toy store debt; a \$1,327.36 clothing store debt; a \$1,000 bank overdraft debt (SOR1.c); car taxes of \$313.02 from 2009; a \$100 pest control debt; and a \$386 debt to a swimming pool supply retailer. (AE C.)

In February 2011, Applicant traveled to an island for ten days for his best friend's wedding and to relax. (GEs 1, 3.) The trip cost him around \$2,000. (Tr. 59.) He exercised stock options in 2010 to pay off and settle some debts and to pay for his travel. (Tr. 57, 60.)

On April 29, 2011, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP). Applicant responded affirmatively to financial record inquiries concerning any bills or debts placed for collection in the last seven years; any accounts suspended, charged off, or cancelled in the last seven years for failing to pay as agreed; and any debts over 180 days delinquent in the last seven years. Applicant disclosed three credit card debts that he settled in 2010: a gasoline credit card debt of \$2,168.65, a \$26,546.87 VISA account, and the patio furniture debt. He listed two other debts, the \$4,003 department store and \$11,512 home improvement debts, to be repaid by his ex-wife under their property settlement. Applicant also checked "Yes" to 26.I, "Have you been counseled, warned, or disciplined for violating terms of agreement for a travel or credit card provided by your employer?," and he indicated that all charges had been paid off as of October 2010. (GE 1.)

As of May 5, 2011, Applicant's credit report showed some outstanding delinquencies not disclosed on his e-QIP. He reportedly owed \$4,006 on the charged-off credit card account in SOR 1.d; \$1,790 on an unsecured installment loan (not in SOR); and \$27,066 on a MasterCard account with a bank (not in SOR).⁴ Three of the accounts that were to have been paid by his ex-wife, including the debts in SOR 1.c and SOR 1.e, were reported on Applicant's credit record. (GE 5.)

On June 2, 2011, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about his misuse of his employer-sponsored credit card and about the delinquent accounts on his credit record. Applicant admitted that he had used the corporate credit card to furnish his apartment, and that he knew it was against company policy to do so. Applicant averred that he had no choice because of his divorce. Applicant denied any other problems with his employment. As for the delinquencies on his credit record, Applicant maintained that he settled several of the joint consumer credit debts incurred during his marriage. The mortgage on the marital home was paid when the house sold. Accounts still being reported as past due were either his spouse's responsibility or he knew nothing about them, including a collection balance of

³ Based on the evidence, SOR 1.a and SOR 1.d pertain to the same account. The debt in SOR 1.d had been placed for collection, as shown in SOR 1.a. SOR 1.e and SOR 1.b pertain to the same account. In cases where debt was duplicated in the SOR, I have chosen to cite to the original debt rather than to the collection agency.

⁴ Applicant assumed repayment responsibility for a credit card debt with this bank on his divorce, although the property agreement does not show the balance of the account. (AE C.)

\$27,066 on a MasterCard account (not in SOR) and a \$4,006 charge-off balance on another credit card account (SOR 1.d). He expressed his belief that the bank overdraft debt (SOR 1.c) had been paid in 2010. (GE 3.)

A cashier's check provided to DOHA in August 2012 shows that his ex-wife paid \$1,000 on April 16, 2010, to the bank owed the overdraft charges (SOR 1.c) (GE 3), which apparently left \$838 owing on the account. On February 27, 2013, Applicant's ex-wife settled the debt in full for \$700. (AEs D, J.)

On April 12, 2012, Applicant paid \$2,202 to settle the delinquent department store debt that should have been paid by his ex-wife. On April 13, 2012, Applicant paid \$1,400 to settle a \$1,790 installment loan past-due since October 2010. By cashier's check posted April 23, 2012, Applicant paid \$2,870 to settle his credit card debt in SOR 1.d.⁵ (GE 3; AEs A, E.)

In April 2012, the creditor who owned the \$11,512.19 home improvement debt in SOR 1.e filed for a judgment against Applicant as primary debtor. (Tr. 66-68.) Applicant was informed by his divorce attorney that he would have to pursue his ex-wife in court to pay a debt obligation that she assumed in the divorce, so Applicant decided to pay the debt. Around June 8, 2012, Applicant agreed to repayment terms with a law firm. On June 25, 2012, Applicant arranged for the automatic debit from his pay of \$200 per month toward the debt. (GE 3.) Payments were made on time through at least April 24, 2013. (AEs B, I; Tr. 23, 49-50.) Despite these payments, the collection agency holding the debt was reporting an unpaid balance of \$13,798 on Applicant's credit record. (GE 6.)

As of late July 2012, Applicant's net income from his defense contractor employment was \$5,461.54 biweekly. He was repaying two loans from his 401(k) at \$141.86 and \$208.62 biweekly. In August 2012, Applicant completed a Personal Financial Statement for DOHA. He had \$1,387 in monthly net discretionary income after paying approximately \$2,000 a month in child support, routine living expenses, and monthly debt payments of \$100 each on an \$8,750 federal income tax debt for tax year 2010 and a \$400 consumer credit debt. (GE 3.) The income tax delinquency was incurred because he was paid a sizeable bonus at work, and because he exercised some stock options to pay off or settle some of his past-due debts in 2010. (Tr. 56-57.)

As of April 23, 2013, Applicant reportedly owed a charge-off balance of \$27,066 on the bank MasterCard debt (not in SOR). His credit information about that account has not been updated since July 2010, and Applicant has had no success in verifying the debt. He has received no collection notices for the debt. (GEs 3, 6; Tr. 53.)

On January 23, 2013, Applicant's employer approved him for a new corporate credit card to be used on business travel. His account is valid from January 2013 to January

⁵ As of July 12, 2012, Equifax Information Services was still reporting the debt as an active collection account with the assignee in SOR 1.a and a balance of \$1,691, even though the debt had been settled. This balance could be the amount that was excused by the creditor because the debt was originally around \$4,006. (GE 4; AEs A, E.)

2016. Applicant used the card in April 2013 to pay a travel agent fee of \$15.40. (AE H; Tr. 39.)

After his divorce, Applicant opened three, low-limit credit cards, two of which are still open. As of April 2013, an account opened in December 2010 with a \$500 limit had a current balance of \$211. A second account with the same lender, opened in March 2012 with a credit limit of \$750, had a current balance of \$748 as of March 2013. (GE 6.) Applicant pays his rent and utility bills on time. (GE 6.) The IRS intercepted Applicant's income tax refund of \$2,000 for 2012 and applied it to his 2010 tax delinquency. As of April 2013, he owed the IRS approximately \$4,500 for tax year 2010 and \$300 to the state for tax year 2011. (Tr. 52-53.)

Applicant has been recognized by his employer for his outstanding contributions. His performance for 2012 consistently met and often exceeded the scope of his job responsibilities. Applicant's supervisors have known Applicant since 1998. Applicant has consistently demonstrated his dedication and reliability. They vouch for his professional and personal character. The director of engineering is not aware of any behavioral issues on Applicant's part that raise a concern for him in regard to Applicant holding a security clearance. (AE G.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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 that 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. 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 F, Financial Considerations

The security concerns about financial considerations are set out in AG ¶ 18:

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.

The SOR does not accurately reflect Applicant’s delinquency due to the duplicate listing of two accounts, but also because of the omission of other debts. Applicant and his ex-wife relied heavily on consumer credit during their marriage, as evidenced by the many credit accounts on his May 2011 credit report. After settling \$34,485 in delinquent credit card debt balances in 2010, Applicant owed \$4,006 on the account in SOR 1.d and \$1,790 on a defaulted installment loan. His ex-wife accepted repayment responsibility for \$838 in overdraft protection charges (SOR 1.c), a home improvement debt of \$11,512 (SOR 1.e), and a department store debt of \$4,003 in collection (not alleged) that were on Applicant’s credit record. In addition, there is an unpaid \$27,066 collection balance on a MasterCard account that Applicant may owe. The creditor bank was identified as one of Applicant’s creditors on his property settlement agreement, although Applicant reports no success in his attempts to verify the debt. Applicant’s record of financial delinquency establishes AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

Furthermore, AG ¶ 19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant cash flow, high debt-to-income ratio, and

other financial breaches of trust,” applies because of the extent of consumer credit debt accumulated during the marriage. Despite Applicant’s stable income from his defense contractor employment, he and his spouse incurred substantial overdraft charges at a bank. Money was so tight when Applicant moved out of the marital home that he felt he had no choice but to use his employer-sponsored credit card account to furnish his apartment. Applicant intended to cover the unauthorized charges, and while he did not pay the account balance in full at the end of the month, he made payments that were accepted by the credit grantor. Even so, he knowingly violated his employer’s policy against use of the corporate account for personal, non-business reasons. This conduct implicates AG ¶ 19(d), “deceptive or illegal financial practice such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.”

Concerning the potentially mitigating conditions, AG ¶ 20(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,” cannot reasonably apply. Applicant satisfied some past-due balances in 2010, but other delinquencies, such as the \$4,006 debt in SOR 1.d, were not settled before April 2012. Moreover, Applicant underpaid his federal income taxes for 2010, apparently because he could not cover the taxes on a sizeable salary bonus. As of August 2012, he owed the IRS \$8,750. While the federal tax debt cannot provide a separate basis for security disqualification under Guideline F because it was not alleged under that guideline, it may appropriately be considered for other purposes,⁶ including whether Applicant’s financial problems are recent or safely behind him. Also, he owes a sizeable delinquency on his home improvement credit card, despite monthly payments of \$200 since late June 2012 toward the \$11,512 balance.

Applicant’s divorce is a circumstance contemplated within AG ¶ 20(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.” In addition to the unexpected costs of having to rent, initially furnish, and then maintain an apartment, Applicant has a sizeable child support obligation of almost \$2,000 per month. However, AG ¶ 20(b) does not mitigate Applicant’s overreliance on consumer credit that preceded his divorce or his repeated misuse of the employer-sponsored credit card to furnish his apartment when his own credit was maxed-out. His difficult family circumstances do not excuse his poor financial judgment and knowing violation of company policy.

⁶ The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant’s credibility; to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole-person analysis under Directive Section 6.3. See, e.g., ISCR Case No. 02-07218 (App. Bd. Mar. 15, 2004); ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012). I have considered the falsification of his e-QIP for these purposes only with respect to assessing the Guideline J concerns.

Mitigating conditions AG ¶ 20(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,” and AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” are applicable because of the efforts Applicant has made to clean up his credit. Before his divorce was final, he settled around \$34,485 in delinquent consumer credit debt by cashing out stock options. In April 2012, he paid \$2,870 to settle the \$4,003 debt in SOR 1.d, \$2,202 to settle the \$4,003 department store debt that was his ex-wife’s repayment responsibility, and \$1,400 to settle the \$1,790 unsecured installment loan on which he defaulted in October 2010. In late June 2012, Applicant authorized the automatic debit of \$200 per month from his checking account to repay the \$11,512 past-due debt (SOR 1.e). Available documentation (AE I) shows monthly payments from December 2012 through April 2013, but Applicant testified credibly that payments have been made since late June 2012, after the creditor filed for a judgment against him. Payments in response to legal action are not indicative of the good-faith required under AG ¶ 20(d). Yet, Applicant’s delay in addressing this debt does not count against him because his ex-wife assumed repayment responsibility in their divorce settlement. Her ongoing disregard of the debt was not within his control. Applicant has a sufficient track record of payments to where he can be counted on to continue to resolve the debt in SOR 1.e.

As of late April 2013, Applicant owed at least \$9,312 on the debt in SOR 1.e and about \$4,800 in delinquent taxes (\$4,500 to the IRS and \$300 to the state) after the IRS intercepted his refund for 2012. There is also the \$27,066 credit card delinquency, which is still on his credit record. Available credit information shows two accounts with the creditor bank on Applicant’s record: a revolving charge on which Applicant was an authorized user, which was closed with a zero balance as of November 2010, and the MasterCard account that was charged off as of January 2010 and has an outstanding collection balance of \$27,066. Presumably, this debt would have been the account covered in his December 14, 2010 property settlement. AG ¶ 20(e) applies if “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 testified that he has had no success in attempting to verify the debt, and he has not been pursued for the debt. Even so, the evidence falls short of establishing that the debt is invalid. The debt has been charged off by the bank. Should Applicant be pursued for all or a portion of the \$27,066, his financial situation appears sufficiently stable for him to make payments on the debt and also remain current on his other financial commitments. As of July 2012, Applicant was paying \$700 a month for loans from his 401(k). Available information does not include any detail about the loans, including about their balances or why Applicant borrowed from his retirement assets, so it is unclear when the loans will be satisfied. Yet, even after repaying the 401(k) loans and \$100 per month to the IRS, Applicant’s monthly net income of \$6,762.16 appears to be more than sufficient to cover his living expenses, his child support, and the \$200 payments on the debt in SOR 1.e. Applicant is not required to satisfy all of his delinquent debts for him to be eligible for a security clearance. His financial situation is sufficiently stable to where revocation of his security clearance eligibility is not warranted because of unresolved past-due debt. Concerning SOR 1.f, while Applicant dealt with his financial overextension by

engaging in conduct against company policy, the security concerns in that regard are more appropriately addressed under Guideline E, *infra*.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

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.

Over a span of several months in 2010, Applicant made unauthorized charges totaling between \$3,000 and \$4,000 on his employer-sponsored credit card account. He purchased a bedroom set for his daughters and household items needed for his apartment, knowing when he did so that the corporate credit card was to be used only for business purposes. Applicant's motive was not to defraud his employer. He made regular payments on the account, although less than the full balance each month, and he satisfied the remaining debt on the account in October 2010. Nonetheless, Applicant's repeated disregard of company policy establishes disqualifying condition AG ¶ 16(d)(3):

(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:

(3) a pattern of dishonesty or rule violations.

Applicant's repeated violation of the terms of a credit card provided by his employer in 2010 was not so minor, so long ago, or so infrequent to qualify for mitigation under AG ¶ 17(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." Furthermore, while his divorce is a unique (i.e., non-routine) circumstance, neither the divorce nor personal financial pressures completely explain his poor judgment in misusing the corporate credit card. Applicant was either maxed-out or unable to use his personal credit cards at the time. He maintains that he had no choice but to use his corporate credit card because he "needed to procure certain household items, along with furniture, to make a normal living place for [his] children when they spent time with [him]." (Tr. 44-46.) While not to minimize the emotional distress that Applicant faced in 2010, Applicant knew what he was doing and that it was wrong. AG ¶ 17(c) does not apply.

Applicant did not bring his misuse of the credit card account to the attention of his employer. He was confronted about the abuse by human resources personnel and his engineering manager. However, he responded affirmatively on his April 2011 e-QIP to whether he had been counseled, warned, or disciplined for violation the terms of a credit card agreement provided by his employer. His admission of wrongdoing when he completed his e-QIP weighs in his favor when considering whether he satisfies mitigating condition AG ¶ 17(d):

(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.

By settling many of his delinquent debts, Applicant has alleviated much of the financial pressure that led him to misuse the employer-sponsored credit card. Yet, the improvement of his financial situation does not completely mitigate the judgment concerns displayed by his knowing violation of his employer's policy prohibiting the use of the corporate credit card for personal reasons. Applicant asserts that he was desperate to find another place to live and that he saw no alternative to using the corporate credit card. The evidence shows that sometime before September 2010, he exercised stock options, which he used to pay old credit card debt. When asked at his hearing why he had not looked to stock options to pay for his furniture and household items, he responded that he had not considered it. He then explained that his exercise of stock options was dictated by when they became available ("It's like a five-year period that you can actually exercise them."). (Tr. 60.) The reasonable inference is that the stock options had not matured as of April 2010, although he presented no corroborating evidence to show that he could not have cashed in his stocks. In December 2012, Applicant indicated that the divorce clouded his judgment, and that he desperately needed to find another place to live. He also described his unauthorized use of the corporate credit card "as a means of retreat to help gain [his] sanity back during this life-altering event." Applicant's desire to restore some normalcy to his life at that point is understandable, but it is troubling that he thought he had no alternative to using the corporate credit card. It raises serious questions about what Applicant might do if he finds himself in a difficult personal situation in the future. Applicant's reform is undermined to the extent that he minimizes or excuses his poor judgment because of personal need or emotional distress.

Apparently Applicant's employer believes Applicant can again be trusted to handle a corporate credit card because it authorized a new card for him in January 2013. Applicant had his previous corporate credit card for five or six years before he abused it. He has had this new card for only a few months. A sustained track record of compliance with the terms of this new company-sponsored credit card is required before I can find that the personal conduct concerns are fully mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).⁷

Applicant and his spouse incurred more than \$50,000 in delinquent consumer credit debt during their marriage. At the time of their divorce, Applicant's credit was so poor and his finances so stressed that he could not afford to furnish and equip his apartment. In his favor, Applicant accepted responsibility for his debts by settling past-due accounts, albeit for less than their full balances in many cases. He settled a department store debt and is making timely payments on another credit card account, which his ex-wife should have paid. The good faith exhibited toward his creditors is consistent with "the upstanding behavior and high more character" that his managers have seen from him, including while on extensive travel to military customer sites. By all accounts, Applicant did not allow his personal financial problems to adversely impact the quality of his work or his dedication.

At the same time, the Government must be assured that those persons with security clearance can be counted on to execute sound judgment. By repeatedly disregarding his employer's policy regarding the appropriate use of a credit card provided to him for business purposes only, Applicant placed his personal judgment, reliability, and trustworthiness in considerable doubt. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990.). Based on the facts before me and the adjudicative guidelines that I am required to consider, I am unable to conclude that it is clearly consistent with the national interest to continue Applicant's security clearance at this time.

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 F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

⁷The factors under AG ¶ 2(a) are as follows:

(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.

Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
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Subparagraph 2.a:	Against Applicant
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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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge