



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



In the matter of: )  
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----- ) ISCR Case No. 11-14441  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: Alan V. Edmunds, Esquire

05/17/2013

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations and personal conduct. Eligibility for a security clearance and access to classified information is granted.

**Statement of the Case**

On September 26, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).<sup>1</sup> On an unspecified date, the Department of Defense (DOD) issued him a set of interrogatories. He responded to the interrogatories on July 13, 2012.<sup>2</sup> On September 12, 2012, the DOD issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining*

<sup>1</sup> GE 1 ((SF 86), dated September 26, 2009).

<sup>2</sup> GE 3 (Applicant's Answers to Interrogatories, dated July 13, 2012).

*Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on September 20, 2012. In a sworn statement, dated September 26, 2012, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on October 31, 2012. The case was initially assigned to Administrative Judge Henry Lazzaro on November 13, 2012, and reassigned to Administrative Judge Robert Tuidier on November 20, 2012. It was reassigned to me on January 4, 2013. A Notice of Hearing was issued on January 17, 2013, and I convened the hearing, as scheduled, on February 11, 2013.<sup>3</sup>

During the hearing, 8 Government exhibits (GE 1 through GE 8) and 25 Applicant exhibits (AE A through AE Y) were admitted into evidence without objection. Applicant and one other witness testified. The transcript (Tr.) was received on February 20, 2013. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and on February 22, 2013, he submitted 28 additional documents.<sup>4</sup> AE Z through AE AAA) were admitted into evidence without objection. One additional document was submitted on May 8, 2013, and admitted into evidence (AE BBB) without objection. The record closed on May 8, 2013.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted two of the factual allegations pertaining to financial considerations (§§ 1.e. and 1.f.), and one of the factual allegations pertaining to personal conduct (§ 2.c.). Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 43-year-old employee of a defense contractor. He previously served with various employers as a base expeditionary target surveillance system

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<sup>3</sup> At the close of the evidentiary portion of the hearing, Department Counsel offered no rebuttal, and arguments were about to commence, when Applicant's attorney noted that the courthouse was about to close. The parties were given the opportunity to make oral argument at another segment of the hearing or to submit written arguments. The parties eventually chose to submit written arguments, and those submissions were received in April 2013.

<sup>4</sup> Some of Applicant's post-hearing submissions were mismarked by him as exhibits P through QQ, but he failed to realize that AE P through AE Y were already admitted into evidence during the hearing, and the newly proposed P through Y were not duplicates of those exhibits already in evidence. Accordingly, to avoid confusion, I have remarked several of the proposed exhibits as follows: Proposed exhibits P through Y have been remarked as AE RR through AE AAA, respectively. AE Z through AE AAA) were admitted into evidence without objection.

operator, operations program manager, supply clerk, and information systems quality assurance and quality control. For nine years he was an information technology (IT) technician and owner of a company.<sup>5</sup> He served on active duty with the U.S. Army in an enlisted status from September 1987 until June 1988; and with the National Guard from 1990 until 1992 or 1993.<sup>6</sup> He received honorable discharges. He received a top secret security clearance in 1987.<sup>7</sup> Applicant graduated from high school in June 1987. He was married in 1992, and he has two daughters (born in 1988 and 1999, respectively) and a son (born in 1992).

## Financial Considerations

Applicant's 2011 credit report indicates that a tax lien was filed against him in 2002; an account was periodically past due in and before 2006; and various collection actions were taken through the ensuing years.<sup>8</sup> Nevertheless, he attributed his financial difficulties to "a slowing economy" in 2006.<sup>9</sup> From 2003 to 2008, Applicant owned a business that specialized in security systems, custom home theatres, and cable and satellite installation and service. The business owned several vehicles and had a sales team. When the economy started to decline, many of the vendors he depended on for work slowed or stopped his company's installation services. Unable to secure other contracts or gainful employment, he was eventually unable to meet his monthly business expenses, operating costs, and household payments, and accounts became delinquent, and were either placed for collection or charged off. Vehicles were repossessed.<sup>10</sup> Because of the equity he had built up in some of the vehicles, when they were auctioned off, there were no deficiency balances.<sup>11</sup>

Applicant contacted a number of his creditors and collection agents regarding his delinquent accounts, tried to seek validation of those accounts, and tried to work out repayment arrangements for those accounts he recognized. He also disputed a number of accounts for various reasons, including those with creditors that he did not recognize, and unauthorized charges or debits. A number of such disputed accounts were subsequently either corrected or removed from his credit reports.<sup>12</sup> Applicant was able

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<sup>5</sup> GE 1, *supra* note 1, at 14-15; GE 3 (Personal Subject Interview, dated April 28, 2011), at 1.

<sup>6</sup> GE 1, *supra* note 1, at 17-18; GE 3 (Personal Subject Interview), *supra* note 5, at 1.

<sup>7</sup> GE 1, *supra* note 1, at 37.

<sup>8</sup> GE 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 26, 2011).

<sup>9</sup> Applicant's Answer to the SOR, at 1.

<sup>10</sup> Applicant's Answer to the SOR, at 1.

<sup>11</sup> GE 3 (Personal Subject Interview), *supra* note 5, at 3.

<sup>12</sup> Applicant disputed a number of accounts for various reasons, and the credit reporting agencies responded to his disputes. Unfortunately, the responses directed him to view the details on their website, and did not identify the accounts in question, or indicate the actual results. Applicant's attorney submitted those superficial responses, but failed to connect the accounts to the disputes or share the results of those disputes, except to provide confirmation numbers for the disputes. The documentation submitted as "evidence" is virtually useless for any purpose except to confirm a dispute was filed. See AE Z (E-mail from Equifax, dated April 28, 2012); AE AA (E-mail from Experian,

to resolve several other accounts, including non-SOR accounts, and they have either been settled, paid off, or were in the process of being paid.

Applicant completed financial management training in creating wealth, building savings, controlling debt, consumer strategies, managing income and expenses, credit reports, setting goals and priorities, and money and values.<sup>13</sup> He also engaged the services of a company to monitor the information appearing in his credit reports, whether it was new inquiries, new account openings, or delinquencies.<sup>14</sup>

In response to the DOD interrogatories, Applicant provided a personal financial statement reflecting a monthly combined family net income of \$13,000; monthly household, utility, transportation, and food expenses of \$1,400; and monthly debt (mortgage, automobile financing, and Internal Revenue Service (IRS) payments of \$1,900; leaving a monthly remainder of \$9,700.<sup>15</sup> He listed total assets of \$27,000.<sup>16</sup> In January 2013, he submitted another personal financial statement reflecting a monthly combined family net income of \$8,000; monthly household, utility, transportation, and food expenses of \$1,200; and monthly debt payments of \$1,350; leaving a monthly remainder of \$5,500.<sup>17</sup> He listed total assets of \$120,000, including \$8,000 in savings.<sup>18</sup>

The SOR identified 12 purportedly continuing delinquencies. Those accounts are either already paid off, in the process of being resolved, or otherwise already resolved or removed from his credit reports. There is very limited evidence of payments by Applicant.

There is a federal tax lien entered against Applicant in October 2002 in the amount of \$4,583.14 (**SOR ¶ 1.a.**).<sup>19</sup> The lien arose over a dispute that occurred in 1995, when Applicant was on his way to purchase some property in another state with \$26,000 in cash derived from savings and the sale of a motor vehicle. He was stopped by police and the funds were confiscated. The Internal Revenue Service (IRS)

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dated July 3, 2012); AE CC (E-mail from Equifax, dated January 30, 2013); AE EE (E-mail from Equifax, dated February 11, 2013); AE FF (E-mail from Equifax, dated February 11, 2013); AE UU (E-mail from Experian, dated February 12, 2013); AE VV (E-mail from TransUnion, dated January 30, 2013); AE XX (E-mail from Equifax, dated March 8, 2013); AE YY (E-mail from Equifax, dated March 17, 2013); AE ZZ (E-mail from Equifax, dated March 21, 2013); AE AAA (E-mail from Equifax, dated April 29, 2012). Although AE DD (E-mail from Equifax, dated February 10, 2013) had no useful information other than a confirmation number, that number was matched up with information appearing in AE P (Equifax Report, dated February 6, 2013).

<sup>13</sup> AE H through AE O (Certificates of Completion, dated January 27, 2013).

<sup>14</sup> AE BB (E-mail, dated September 27, 2012).

<sup>15</sup> Personal Financial Statement, undated), attached to GE 3, *supra* note 2.

<sup>16</sup> Personal Financial Statement, *supra* note 14.

<sup>17</sup> AE X (Personal Financial Statement, dated January 31, 2013).

<sup>18</sup> AE X, *supra* note 16.

<sup>19</sup> GE 6, *supra* note 8, at 6.

confiscated the money and levied tax on the funds.<sup>20</sup> Applicant hired an attorney to resolve the issue, but it took over a decade to do so. Applicant contended he had paid the tax prior to the money being returned to him, but it remained on his credit report.<sup>21</sup> The lien was finally “self-released” on September 25, 2012.<sup>22</sup> Department Counsel has argued that the lien was released because the IRS chose not to refile the lien, and not because the lien amount was paid by Applicant.<sup>23</sup> She is correct, but under the circumstances, the release of the lien, whether it was through payment or dispute, cannot be discounted. The account has been resolved.

There is a loan with a bank for about \$24,000 to finance the purchase of a motor vehicle used in Applicant’s business. The vehicle was subsequently repossessed with a remaining balance of about \$9,000. It was sold at auction, leaving a deficiency of less than \$800.<sup>24</sup> Applicant provided several inconsistent explanations for the delinquency and how it was subsequently handled. He said he was under the impression that the balance had been written off, but then stated that when he called the creditor to pay the remaining balance, the creditor declined to accept the payment because the account had been charged off.<sup>25</sup> Applicant later disputed the \$9,000 balance, claiming he had paid the creditor \$3,000 after the vehicle was repossessed to resolve the issue.<sup>26</sup> He offered no documentation to support his contention that he had paid the \$3,000 or that the account had been resolved. The account was placed for collection and transferred or sold, in turn, to two collection agents or debt buyers who initially reported the outstanding balance was \$10,226.<sup>27</sup> The unpaid balance was increased one year later to \$12,017 (**SOR ¶ 1.b.**).<sup>28</sup> Applicant sought validation of the account with the collection agent,<sup>29</sup> and disputed the account with both the collection agent and Equifax. The initial collection agent acknowledged the information it furnished the credit reporting agencies was inaccurate.<sup>30</sup> The current collection agent ceased collection efforts and closed the

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<sup>20</sup> GE 3 (Personal Subject Interview), *supra* note 5, at 2.

<sup>21</sup> Applicant’s Answer to the SOR, at 1; GE 3 (Applicant’s Answers to Interrogatories), *supra* note 2.

<sup>22</sup> AE Y (IRS Facsimile Federal Tax Lien Documents, dated September 25, 2012). The documents were marked by Applicant’s attorney as exhibits F-1 and F-2, and subsequently remarked by his attorney as AE Y.

<sup>23</sup> A lien usually releases automatically 10 years after a tax is assessed, if the statutory period for collection has not been extended and the IRS does not extend the effect of the lien by refiling it. When a lien is self-released, the *Notice of Federal Tax Lien* itself is the release document. A lien is self-released if the date for refiling has passed and the IRS has not refiled the original *Notice of Federal Tax Lien*. See IRS Publication 1468 (Rev. 3-2010), at 3.

<sup>24</sup> Applicant’s Answer to the SOR, at 1.

<sup>25</sup> Applicant’s Answer to the SOR, at 1. According to the 2011 credit report, \$9,976 was charged off. See GE 6, *supra* note 8, at 8.

<sup>26</sup> Tr. at 75-78.

<sup>27</sup> GE 6, *supra* note 8, at 10.

<sup>28</sup> GE 5 (Equifax Credit Report, dated June 28, 2012), at 1.

<sup>29</sup> AE D (Letter, dated December 9, 2012).

<sup>30</sup> AE E (Letter, dated January 16, 2013).

account.<sup>31</sup> While there is no evidence that Applicant paid the deficiency balance, the account has been resolved.

There is an account with a rental company from which Applicant rented vehicle parts for his business. There was an unpaid balance of \$4,390 that was placed for collection, and sold to a factoring company (**SOR ¶ 1.c.**).<sup>32</sup> Applicant attempted to validate the account with the factoring company, but that attempt was unsuccessful when his letter was returned as “not deliverable as addressed – unable to forward.”<sup>33</sup> Applicant denied that he owed any balance and claimed the account had been “closed and satisfied,” and referred to a credit report to support his claim.<sup>34</sup> A review of the credit report does not support his contention, for the account is not listed in the report. Applicant contended he had complied with the terms of the rental agreement when he returned the rented items to the vendor.<sup>35</sup> He also said he spoke with the corporate office and was told the debt was a mistake and had been resolved.<sup>36</sup> While the account is no longer listed in the two 2013 credit reports, Applicant has not submitted any documentation to support his contention that the account has been resolved. Nevertheless, since the basis of the SOR allegation was the unfavorable listing of the account in the 2012 credit report, and Department Counsel conceded that there is proof of resolution, I conclude the account has been resolved.

There is another account with the same rental company from which Applicant rented vehicle parts for his business. There was an unpaid balance of \$3,972 that was placed for collection, and sold to a factoring company (**SOR ¶ 1.d.**).<sup>37</sup> Applicant attempted to validate the account with the factoring company, but that attempt was also unsuccessful when his letter was returned as “not deliverable as addressed – unable to forward.”<sup>38</sup> Applicant denied that he owed any balance and claimed the account had been “closed and satisfied,” and referred to a credit report to support his claim.<sup>39</sup> A review of the credit report does not support his contention, for the account is not listed in the report. Applicant contended he had complied with the terms of the rental agreement when he returned the rented items to the vendor.<sup>40</sup> He also said he spoke with the

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<sup>31</sup> AE BBB (Letter, dated April 30, 2013).

<sup>32</sup> GE 5, *supra* note 28, at 1. It should be noted that “factoring company” is a company that buys “accounts receivable” from a current creditor and then collects on those receivables from the debtor. A factored account is not supposed to be an account that is charged off.

<sup>33</sup> AE F (Letter, dated December 9, 2012).

<sup>34</sup> GE 3 (Applicant’s Answers to Interrogatories), *supra* note 2; AE P (Equifax Credit Report, dated February 6, 2013); Tr. at 39-40.

<sup>35</sup> Tr. at 79.

<sup>36</sup> Tr. at 39, 42.

<sup>37</sup> GE 5, *supra* note 28, at 1.

<sup>38</sup> AE F, *supra* note 33.

<sup>39</sup> GE 3 (Applicant’s Answers to Interrogatories), *supra* note 2; AE P, *supra* note 34; Tr. at 39-40.

<sup>40</sup> Tr. at 79.

corporate office and was told the debt was a mistake and had been resolved.<sup>41</sup> Applicant also argued that the two accounts were actually the same account, although there were separate account numbers for each account. He has submitted no documentation to support his position. While the account is no longer listed in the two 2013 credit reports, Applicant has not submitted any documentation to support his contention that the account has been resolved. Nevertheless, since the basis of the SOR allegation was the unfavorable listing of the account in the 2012 credit report, and Department Counsel concedes that there is proof of resolution, I conclude the account has been resolved.

There is a medical account with unidentified medical provider in the amount of \$100 that was placed for collection (**SOR ¶ 1.e.**).<sup>42</sup> Applicant acknowledged the original charges were for an emergency room visit for his son, and the unpaid balance was the remaining co-pay.<sup>43</sup> Applicant disputed the account information listed in his credit report,<sup>44</sup> but in September 2012, he paid the \$100.<sup>45</sup> The creditor acknowledged the payment and instructed the credit reporting agencies to delete the account.<sup>46</sup> The account has been resolved.

There is a loan with a finance company for about \$26,877 to finance the purchase of a motor vehicle. The vehicle was subsequently repossessed and sold at auction with a remaining balance of about \$9,002 (**SOR ¶ 1.f.**).<sup>47</sup> Applicant provided several inconsistent explanations for the delinquency and how it was subsequently handled. He initially said the vehicle was purchased for his daughter,<sup>48</sup> but later his attorney argued that it was a vehicle purchased for the business. Applicant also said that when the vehicle was sold, the original amount of the debt was satisfied.<sup>49</sup> He told the OPM investigator in April 2011 that he would follow up with the creditor and if there was an unpaid balance he would may payment arrangements to resolve the account.<sup>50</sup> But first, Applicant disputed the account with Equifax.<sup>51</sup> He offered no documentation to

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<sup>41</sup> Tr. at 39.

<sup>42</sup> GE 5, *supra* note 28, at 1.

<sup>43</sup> Applicant's Answer to the SOR, at 2.

<sup>44</sup> GE 3 (TransUnion Credit Report, undated), at 2.

<sup>45</sup> Tr. at 42-44; AE Y (Receipt, dated September 25, 2012). The documents were marked by Applicant's attorney as exhibits H-1 and H-2, and were subsequently remarked by his attorney as AE Y.

<sup>46</sup> AE R (Letter, dated February 8, 2013).

<sup>47</sup> GE 6, *supra* note 8, at 7.

<sup>48</sup> GE 3 (Personal Subject Interview), *supra* note 5, at 4.

<sup>49</sup> GE 3 (Applicant's Answers to Interrogatories), *supra* note 2.

<sup>50</sup> GE 3 (Personal Subject Interview), *supra* note 5, at 4.

<sup>51</sup> AE P, *supra* note 34, at 4.

support the basis for his dispute. The creditor offered to settle the account for \$2,800, starting in October 2012,<sup>52</sup> but later that month, the creditor reduced the settlement offer to \$2,200, provided Applicant made 22 consecutive monthly payments of \$100.<sup>53</sup> Applicant made several payments, for by January 2013, the remaining balance was \$1,900.<sup>54</sup> The account is in the process of being resolved.

There is an account with a telephone company in the amount of \$651 that was placed for collection (**SOR ¶ 1.g.**).<sup>55</sup> Applicant was unaware of the account, claiming he never had an account with that particular company.<sup>56</sup> Applicant disputed the account, and it was apparently deleted from his credit reports, as the listing is no longer on the 2012 or 2013 credit reports.<sup>57</sup> The account has been resolved.

There is a bank checking account in the amount of \$664 that was placed for collection and either transferred or sold to a collection agent (**SOR ¶ 1.h.**).<sup>58</sup> Applicant explained that while he was working in the Gulf region during the aftermath of Hurricane Katrina, he went to a telephone provider to purchase a cell phone. After having the funds debited from his account, he was informed that he could not obtain the phone with a number from another state. The charge was reversed, but upon arriving back in his home state, he discovered the account had not been credited as the vendor had reprocessed the charge without Applicant's permission.<sup>59</sup> He disputed the account with the credit reporting agency and the listing was deleted.<sup>60</sup> While the account is no longer listed in the 2012 or the two 2013 credit reports, Applicant has not submitted any documentation to support his contention that the account has been resolved. Nevertheless, since the basis of the SOR allegation was the unfavorable listing of the account in the 2011 credit report, and Department Counsel conceded that there is proof of resolution, I conclude the account has been resolved.

There is an account with a pizza shop reflecting a returned check from August 2005 in the amount of \$7.95 that was placed for collection with an eventual balance of \$39.95 (**SOR ¶ 1.i.**).<sup>61</sup> Applicant denied ever owing the debt,<sup>62</sup> and disputed the account

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<sup>52</sup> AE Y (E-mail, dated September 25, 2012). The document was marked by Applicant's attorney as exhibit J, and subsequently remarked by his attorney as AE Y.

<sup>53</sup> AE A (Letter, dated October 23, 2012).

<sup>54</sup> AE A (Receipt, dated January 19, 2013).

<sup>55</sup> GE 6, *supra* note 8, at 8.

<sup>56</sup> GE 3 (Personal Subject Interview), *supra* note 5, at 4.

<sup>57</sup> Tr. at 47-48.

<sup>58</sup> GE 6, *supra* note 8, at 7, 11.

<sup>59</sup> Applicant's Answer to the SOR, at 3.

<sup>60</sup> Tr. at 48-50.

<sup>61</sup> GE 6, *supra* note 8, at 11.



with the creditor, and in September 2012, the creditor confirmed that it was no longer attempting collections on the check, and was asking the credit reporting agencies to delete the entry.<sup>63</sup> It appears that the debt was no longer collectable as the statute of limitations had expired. The account has been resolved.

There is an account with an insurance company with an unpaid balance of \$424 that was placed for collection in September 2005 (**SOR ¶ 1.j.**)<sup>64</sup> The account was eventually transferred or sold to a collection agent. Applicant acknowledged having had coverage with the particular creditor, but claimed he had cancelled the coverage in favor of another company with more favorable rates.<sup>65</sup> Applicant sought validation from the creditor,<sup>66</sup> and the collection agent replied that it was no longer reporting the account to the credit reporting agencies.<sup>67</sup> He also disputed the account with the credit reporting agency.<sup>68</sup> The account is no longer listed in the 2012 or the two 2013 credit reports. Applicant contended the collection agent reported that the debt “was incorrect and it was removed,”<sup>69</sup> but that statement is inaccurate for no such comment appears in the letter to which he referred. Instead, it appears that the debt was no longer collectable as the statute of limitations had expired. The account has been resolved.

There is an account with a telephone company in the amount of \$391 that was placed for collection (**SOR ¶ 1.k.**)<sup>70</sup> Applicant claimed he was not familiar with the account, claiming he “was in Afghanistan at the time this account went into collection.”<sup>71</sup> He subsequently indicated he was working to resolve the account in an attempt to reach a negotiated settlement, and if was unable to do so, he would pay the balance in full.<sup>72</sup> Applicant disputed the account.<sup>73</sup> The creditor acknowledged that Applicant has a zero balance on an unspecified account,<sup>74</sup> but he contends the communication refers to the

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<sup>62</sup> Tr. at 50-51.

<sup>63</sup> AE Y (E-mail, dated September 24, 2012). The document was marked by Applicant’s attorney as exhibit A-1, and subsequently remarked by his attorney as AE Y.

<sup>64</sup> GE 6, *supra* note 8, at 11.

<sup>65</sup> Applicant’s Answer to the SOR, at 3.

<sup>66</sup> AE B (Letter, dated December 9, 2012).

<sup>67</sup> AE C (Letter, dated January 11, 2013).

<sup>68</sup> GE 3 (Applicant’s Answers to Interrogatories), *supra* note 2.

<sup>69</sup> Tr. at 52.

<sup>70</sup> GE 6, *supra* note 8, at 12.

<sup>71</sup> GE 3 (Personal Subject Interview), *supra* note 5, at 5.

<sup>72</sup> GE 3 (Applicant’s Answers to Interrogatories), *supra* note 2.

<sup>73</sup> Tr. at 52.

<sup>74</sup> AE Y (E-mail, dated September 24, 2012). The document was marked by Applicant’s attorney as exhibit B-1, and subsequently remarked by his attorney as AE Y.

SOR account.<sup>75</sup> Department Counsel conceded that there is proof of resolution, and I conclude the account has been resolved.

## Financial Considerations and Personal Conduct

There is a corporate travel card account that Applicant was issued to make purchases while employed by his government contractor-employer. Applicant was expected to use the card for food, lodging, transportation, entertainment, rental cars, clothing, etc., while traveling.<sup>76</sup> Upon Applicant's termination of employment, for disputed reasons as discussed further below, there was a purported outstanding balance on the card of \$7,630.08, which allegedly included unauthorized purchases. There was a deduction, not otherwise described, of \$2,192.99, leaving a balance of \$5,466.09 (**SOR ¶ 1.I.**).<sup>77</sup> Applicant's corporate director of outside the contiguous United States (OCONUS) Operations reported to the security manager that, based on his review of the travel card transactions, Applicant was in Dubai on July 31, 2011 and in California on August 1, 2011.<sup>78</sup> Furthermore, as Applicant allegedly never reported to his theater lead at the overseas air base as instructed, those charges, and others might be unauthorized. Applicant's corporate travel card account billing statement for the period between April 21, 2011 and August 2, 2011, reflects a \$7,630.08 balance.<sup>79</sup>

Applicant and a colleague were deployed to Afghanistan in May 2011. When they arrived in Dubai, they obtained plane tickets to a facility in Afghanistan, but the salesperson made a mistake and charged both tickets to Applicant's corporate travel card.<sup>80</sup> As early as June 2011, there was substantial continuing controversy regarding Applicant's difficulties in obtaining a travel authorization, a travel request, a new common access card (CAC), timely reimbursement of past authorized expenses, and access to a printer/scanner to upload necessary receipts and other required paperwork.<sup>81</sup> This was especially true while he was at a forward operating base, also referred to as a combat outpost or COP, because his CAC was expiring and he had limited communication availability.<sup>82</sup> As a result, he was unable to upload the receipts

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<sup>75</sup> Tr. at 52.

<sup>76</sup> Tr. at 107.

<sup>77</sup> GE 8 (Letter, dated September 12, 2011). There is no evidence specifying which of the charges appearing in the Individual Billing Statement were unauthorized, and there is no explanation regarding the \$2,192.99 credit.

<sup>78</sup> GE 8 (E-mail, dated August 8, 2011). The reference to California was clearly erroneous, for it referred to Applicant dining at a particular restaurant purportedly located in California, but it is actually located in Applicant's state of residence. See AE GG (Listing of Store Locations, dated February 15, 2013).

<sup>79</sup> GE 8 (Individual Billing Statement, dated August 7, 2011).

<sup>80</sup> AE RR (Letter, dated February 17, 2013); AE TT (Flight Ticket, dated May 15, 2011); AE SS (Flight Ticket, dated May 15, 2011).

<sup>81</sup> GE 3 (Applicant's Answers to Interrogatories), *supra* note 2.

<sup>82</sup> AE Y (Location Data, undated). The document was marked by Applicant's attorney as exhibit G, and subsequently remarked by his attorney as AE Y.

required for him to obtain reimbursement for transportation and lodging. In addition, his salary was “significantly” short.<sup>83</sup> That same month, there were several e-mails between Applicant and various corporate personnel, including Applicant’s theatre lead and the travel accounting office, and between various corporate personnel regarding Applicant’s corporate travel card account.<sup>84</sup> Applicant requested permission to return to the large Air Force base where he could resolve the various corporate travel card account issues and get his CAC renewed, but his theatre lead directed him not to leave his COP “for any reason.”<sup>85</sup> The corporate travel accounting office acknowledged Applicant’s inability to upload, mail, or fax necessary paperwork, and reported the situation to Applicant’s corporate director of OCONUS Operations.<sup>86</sup> Because the established company process for reimbursement of expenses on the corporate travel card called for the employee to scan and upload receipts to be sent to the company, then for the employee to pay the bill received from the card issuer, and then for the reimbursement to be paid to the employee,<sup>87</sup> Applicant was unable to catch up to balance the account.

In July 2011, Applicant and his theatre lead exchanged e-mails regarding Applicant’s failure to issue daily status reports and Applicant replied that communications, including Defense Switching Network (DSN), cell, and Internet were repeatedly down. Applicant was promised a scanner, but it was never sent.<sup>88</sup> Applicant obtained permission from his military commander to travel down to the large Air Force base to resolve the various corporate travel card account issues and get his CAC renewed, but Applicant’s theatre lead again denied him permission to do so.<sup>89</sup> Upon receiving the denial, Applicant notified his theatre lead in person that he was resigning, and that upon getting access to the internet and a computer, he would e-mail his intentions to the corporate deputy program manager of business operations and the corporate director of OCONUS Operations. Applicant also called the corporate deputy program manager of business operations and told him the two reasons for resigning were the unresolved payroll and transportation issues and the “ineffective leadership,” and sought guidance on out-processing. He was referred to someone else.<sup>90</sup>

On August 2, 2011, the theatre lead informed the corporate director of OCONUS Operations that he had “no idea where (Applicant) is located,” and opined that Applicant had “been lying to [him] for quite some time about numerous things in addition to the

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<sup>83</sup> GE 3 (Various e-mails, various dates in June 2011).

<sup>84</sup> GE 3 (Various e-mails, various dates in June 2011). Applicant’s theatre lead was preparing a Six Month Appraisal for him, and he stated to Applicant: “Thank you for being here and what you are doing at [the COP].”

<sup>85</sup> GE 3 (E-mails, dated June 10, 2011); Tr. at 54.

<sup>86</sup> GE 3 (E-mail, dated June 13, 2011).

<sup>87</sup> Applicant’s Answer to the SOR, at 4.

<sup>88</sup> Applicant’s Answer to the SOR, at 4.

<sup>89</sup> Applicant’s Answer to the SOR, at 4.

<sup>90</sup> Applicant’s Answer to the SOR, at 4; Tr. at 57, 104.

other items we have discussed.”<sup>91</sup> On August 5, 2011, the theatre lead again indicated he had not heard from Applicant, and he intended to report Applicant as a missing contractor.<sup>92</sup> On August 6, 2011, when he arrived in Dubai and gained access to a computer, Applicant sent his corporate director of OCONUS Operations a message.<sup>93</sup>

Due to ongoing unresolved payroll and administration issues (sic), I would like to submit my letter of resignation. I would like to thank [various corporate employees] for the opportunity you all provided me to work with [the corporation] on the [program]. I wish you all success with current and future endeavors. I will proceed to out process thru [a particular office or contractor] and return all [corporate materials to the [corporate] office.

The corporate director of OCONUS Operations forwarded the message to those corporate employees to which Applicant referred.<sup>94</sup> Two days later, the corporate director of OCONUS Operations, essentially repeating what the theatre lead had told him, reported Applicant “never did report to the theatre lead . . . as instructed and left country without processing or without authorization.”<sup>95</sup> On August 10, 2011, Applicant’s status was reported as an unfavorable incident in the Joint Personnel Adjudication System (JPAS), and the incident report was repeated on November 18, 2011.<sup>96</sup>

On August 12, 2011, Applicant wrote the corporate offices and requested out-processing guidance.<sup>97</sup> He received a return message advising him to call another individual who would “get [Applicant] squared away.”<sup>98</sup> Unfortunately, as Applicant noted, the telephone number furnished only contained nine digits.<sup>99</sup> On September 14, 2011, Applicant contacted corporate personnel, including the corporate director of OCONUS Operations, and requested guidance, which he still had not received. He

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<sup>91</sup> GE 8 (E-mail, dated August 2, 2011). The theatre lead offered no examples regarding the assertion that Applicant had been lying to him for some time, and no statement or other evidence was offered in which the theatre lead disputed Applicant’s assertions regarding their relationship or that Applicant had personally informed him that he was resigning. This information directly contradicts the report by the theatre lead that Applicant was “supposed (sic) to report to work in Afghanistan but failed to report to in theatre lead. . . He did however arrive in country according to [military air] records.” See GE 8 (E-mail, dated August 8, 2011).

<sup>92</sup> GE 8 (E-mail, dated August 5, 2011).

<sup>93</sup> Tr. at 105; AE Y (E-mail, dated August 6, 2011). The document was marked by Applicant’s attorney as exhibit K, and was subsequently remarked by his attorney as AE Y. The exhibit is identical to AE II. Applicant had previously requested the standard operating procedures for out-processing, but either the topic was not covered, or he never received the requested materials. He explained that out-processing was accomplished in the United States. See Tr. at 106.

<sup>94</sup> AE Y (E-mail, dated August 6, 2011), *supra* note 91; AE II.

<sup>95</sup> GE 8 (E-mail), *supra* note 78.

<sup>96</sup> GE 2 (JPAS Incident History, dated October 3, 2012).

<sup>97</sup> GE 3 (E-mail, dated August 12, 2011).

<sup>98</sup> GE 3 (E-mail, dated August 15, 2011).

<sup>99</sup> GE 3 (E-mail, dated August 15, 2011).

wanted resolution of the travel issues and payroll issues.<sup>100</sup> A corporate response came the following day, stating that the information was being collected, that a conference call would be set up, and the documentation would be forwarded to Applicant.<sup>101</sup>

With the exception of another unfavorable incident pertaining to the allegations related to the corporate travel card account placed in JPAS on March 1, 2012,<sup>102</sup> the record is silent as to what occurred between September 15, 2011 and July 13, 2012. On that date, Applicant stated:<sup>103</sup>

The purchases I made were authorized. . . . I contacted everyone in my supervisory chain of command and explained my inability to [unreadable] the documents due to the remote location. . . . I am open to any avenues necessary to resolve this. I have travel expenses that have not been paid by [the corporation], to include lodging, air fare, meals, and per diem. I also was not paid the 35% danger and 35% hazard pay during my deployment, as specified by the Department of State. I have made several attempts to resolve this and I am willing to do whatever is needed to finalize. . . . I will do whatever is necessary to resolve this.

In early August 2012, Applicant called the security supervisor and “discussed the same items as before.” Applicant was instructed to contact the corporate legal department to set up a repayment plan.<sup>104</sup> On November 1, 2012, there was still controversy regarding Applicant’s account and his status. Applicant stated a concern to the strategic human resources (HR) business partner that the JPAS entries were incorrect because the disputed amount had not yet been accurately determined and that the assertion that he had failed to report to work was false. He also noted that he was wrongfully denied a referral bonus.<sup>105</sup> The strategic HR business partner also recounted the corporate position:<sup>106</sup>

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<sup>100</sup> GE 3 (E-mail, dated September 14, 2011).

<sup>101</sup> AE JJ (E-mail, dated September 15, 2011).

<sup>102</sup> GE 2, *supra* note 96. The security supervisor reported that Applicant had made purchases that were not approved, and that he had terminated his employment without paying the money back or setting up a payment plan. It also reported that the corporate legal department had sent Applicant a collections letter, but that Applicant had still not made a payment or acknowledgment of the issue. There is no evidence that pre-approval of purchases was ever required. Other than the opinion of the security supervisor, there is little evidence to support the conclusion that the purchases were “not approved” or “unauthorized.” Instead, Department Counsel has argued that because the JPAS entry said the charges were not approved, that entry constituted evidence sufficient to prove the charges were unauthorized. See Tr. at 113-114. The evidence reflects merely an unpaid balance on the account. See Tr. at 110.

<sup>103</sup> GE 3, *supra* note 2.

<sup>104</sup> GE 8 (E-mail, dated August 15, 2012).

<sup>105</sup> AE Q (E-mail, dated November 1, 2012).

<sup>106</sup> AE HH (E-mail, undated).

You were expected to report to [the theatre lead] in Afghanistan on or about August 2, 2012. All of the status reports you provided to me are from July – none of them addressed where you were after you were supposed to arrive in country and report to [the theatre lead] on August 2. According to management you never checked in with [the theatre lead] in Afghanistan and it was only by checking your credit card was it discovered that you had left country without out-processing (sic) and without proper authorization. That is why they claim you abandoned your post.

Applicant disputed the account, and reiterated that he was in Afghanistan working since May 2011; that the statement regarding his travel itinerary, and especially his presence in California, were false; and that the theatre lead was the cause of the problems.<sup>107</sup>

Applicant was informed that if he paid his overdue corporate travel card expenses as instructed, the security flags would no longer be a concern.<sup>108</sup> Although Applicant continued to dispute the amount, he realized that the stand-off was causing him to be unable to work. Accordingly in early November 2012, he sent a check for a partial payment to the corporation.<sup>109</sup> He did not submit documentation to confirm that payment. On November 11, 2012, Applicant and the corporate payroll operations supervisor agreed to a monthly repayment plan of \$250.<sup>110</sup> He has made the agreed monthly payments since November 19, 2012.<sup>111</sup> The account is in the process of being resolved.

The SOR also alleged an additional incident that occurred in May 1995, the giving of a false name, address, or birthdate to a law enforcement officer – a misdemeanor. Applicant was convicted of the charge in July 1995, and fined \$250.<sup>112</sup> Applicant explained that a former client for whom he had done construction work, but who was also a drug dealer, had issued a contract on Applicant's life at the time. Following the arrest, Applicant was placed in protective custody for one year.<sup>113</sup> The record is silent as to the facts regarding Applicant, the authorities, and the drug dealer.<sup>114</sup> Applicant considered the incident a "turning point in my life."<sup>115</sup>

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<sup>107</sup> AE HH (E-mail, dated November 2, 2012).

<sup>108</sup> AE HH (E-mail, dated November 2, 2012).

<sup>109</sup> AE Q (E-mail, dated November 6, 2012).

<sup>110</sup> AE W (E-mail, dated November 9, 2012).

<sup>111</sup> AE OO (Checks, various dates); AE QQ (Domestic Return Receipt, dated February 14, 2013); AE T (Certified Mail Receipt, dated February 9, 2013).

<sup>112</sup> GE 7 (Criminal History Record, dated June 17, 2009).

<sup>113</sup> Tr. at 117-118.

<sup>114</sup> Although Applicant's attorney argued that the incident occurred in a "racially-biased" part of the state, no evidence was presented to support his argument, and I have given it no weight.

<sup>115</sup> Tr. at 60.

## Work Performance and Character References

Applicant's work performance and character have been described by his combined joint task force commander in Afghanistan in extremely positive terms. He has been described as vital to the unit's success. Applicant has "worked tirelessly" to improve the ability of the COP to provide early detection of an attack, and he is a valued member in enhancing the unit's maneuverability and operability in the area.<sup>116</sup> A senior non-commissioned officer in the unit described Applicant's attributes as loyalty, honesty, duty, dedication to detail, work ethic, highest degree of professionalism, and respect, and supported Applicant without reservation.<sup>117</sup> A former coworker, who has worked with Applicant for over 20 years, also gives Applicant his highest recommendation. Applicant is described as a team player who is reliable and intelligent, and a person who could always be counted on to put in more than his share of the work.<sup>118</sup> The individual who flew with Applicant to Afghanistan in May 2011 also had positive things to say about him. He noted that Applicant has always displayed a "high degree of integrity, responsibility, and ambition. He is also the most dependable team player that I have ever had the opportunity to work with. His good judgment and mature outlook ensure a logical and practical approach to any endeavor."<sup>119</sup> A retired four-star general, now the president of a company, has known Applicant for about five years. Applicant has worked for him on various projects. Applicant has a positive, can-do attitude and desire to excel, with outstanding team leadership and technical competency, and tireless dedication to project timelines, as well as an impeccable character.<sup>120</sup> Applicant was awarded a certificate of appreciation from the U.S. Army Intelligence and Security Command Forward – Afghanistan in recognition of outstanding support to the mission that was critical to the successful accomplishment of the mission.<sup>121</sup>

## 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."<sup>122</sup> 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

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<sup>116</sup> AE Y (Letter, dated July 8, 2011). The document was marked by Applicant's attorney as exhibit E, and subsequently remarked by his attorney as AE Y. The exhibit is identical to an attachment in GE 3.

<sup>117</sup> AE U (Character Reference, undated).

<sup>118</sup> AE V (E-mail, dated December 10, 2012).

<sup>119</sup> AE P (Letter, dated December 30, 2012).

<sup>120</sup> AE Y (Letter, dated July 12, 2012). The document was also erroneously marked by Applicant's attorney as exhibit D, but it was subsequently remarked by his attorney. The exhibit is identical to an attachment in GE 3; Tr. at 26.

<sup>121</sup> AE Y (Certificate of Appreciation, undated). The document was marked by Applicant's attorney as exhibit C, and subsequently remarked by his attorney as AE Y.

<sup>122</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>123</sup>

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”<sup>124</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.<sup>125</sup>

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information.

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<sup>123</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>124</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

<sup>125</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).



Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>126</sup>

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.”<sup>127</sup> 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 as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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 avoided drawing inferences grounded on mere speculation or conjecture.

## Analysis

### Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is 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 guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *inability or unwillingness to satisfy debts* is potentially disqualifying. Similarly, under AG ¶ 19(c), a *history of not meeting financial obligations* may raise security concerns. Although there was a tax lien filed against Applicant in 2002, that lien was related to cash he had on hand derived from savings and the sale of a motor vehicle. Commencing in 2006, Applicant started experiencing some financial difficulties, and over the next few years those difficulties increased to the point where he was unable to make routine monthly payments for a number of accounts. His accounts eventually started becoming delinquent and were placed for collection or sold. Repossessions occurred. With respect to those accounts and the purported outstanding balance on the corporate travel card of \$5,466.09, AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *the behavior happened so long ago, was so infrequent, or*

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<sup>126</sup> *Egan*, 484 U.S. at 531

<sup>127</sup> See Exec. Or. 10865 § 7.

*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. Also, under AG ¶ 20(b), financial security concerns may be mitigated where 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. Evidence that 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 is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.<sup>128</sup> In addition, it is potentially mitigating under AG ¶ 20(e) when 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.*

AG ¶¶ 20(b), 20(c), 20(d), and 20(e) apply. AG ¶ 20(a) partially applies. The nature, frequency, and relative recency of Applicant's financial difficulties since 2006 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Commencing in 2006, and continuing over the next few years, the national economic recession occurred – a situation that was largely beyond his control – and it caused him financial problems that made it difficult for him to remain current on all of his accounts. When the economy started to decline, many of the vendors he depended on for work slowed or stopped his company's installation services. Unable to secure other contracts or gainful employment, he was eventually unable to meet his monthly business expenses, operating costs, and household payments. Vehicles were repossessed and auctioned off, but because of the equity he had built up in some of the vehicles, there were no deficiency or small balances.

Applicant contacted his creditors and collection agents, tried to seek validation of accounts, and tried to work out repayment arrangements for those accounts he recognized.<sup>129</sup> He also successfully disputed a number of accounts for various reasons,

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<sup>128</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 [or statute of limitations]) 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>129</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-

including those with creditors that he did not recognize, and unauthorized charges or debits. A number of such disputed accounts were subsequently either corrected or removed from his credit reports. It is of some interest that the older credit report reflects a number of delinquent accounts that found themselves included in the SOR, but those same accounts, no longer included in more recent credit reports, remain in the SOR. As noted above, Applicant completed financial management training. Applicant's indebtedness was not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Instead, his financial problems were caused by circumstances largely beyond his control. Applicant was able to resolve all but one of his accounts, including non-SOR accounts, and they have either been settled, paid off, or were removed from his credit report. There are two remaining accounts. One account related to the repossessed motor vehicle is in the process of being resolved under an agreed a repayment plan. The other account, pertaining to his corporate travel card, is also in the process of being paid after a lengthy period of controversy and dispute. Under the circumstances, Applicant acted responsibly by addressing his delinquent accounts, and his actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.<sup>130</sup>

### **Guideline E, Personal Conduct**

The security concern relating to the guideline 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.

The guideline notes several conditions that could raise security concerns.

Under AG ¶ 16(c), it is potentially disqualifying if there is:

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.

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13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

<sup>130</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

It is also potentially disqualifying under AG ¶ 16(d), if there is:

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: . . . (4) evidence of significant misuse of Government or other employer's time or resources.

In May 1995, Applicant gave a law enforcement officer a false name, address, or birthdate. He was convicted of the misdemeanor charge in July 1995 and fined \$250. Thereafter, with the exception of the alleged conduct relating to his employer in Afghanistan and the use of the corporate travel card, there are no SOR allegations of questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. As to this 1995 incident, AG ¶¶ 16(c) and 16(d) apply.

Applicant was deployed to Afghanistan in May 2011. There was substantial continuing controversy regarding Applicant's difficulties in obtaining a new CAC, timely reimbursement of past authorized expenses, and access to a printer/scanner to upload necessary receipts and other required paperwork. As a result, he was unable to upload the receipts required for him to obtain reimbursement for transportation and lodging. Applicant requested permission to return to the large Air Force base where he could resolve the various corporate travel card account issues and get his CAC renewed, but his theatre lead directed him not to leave his COP "for any reason." The corporate travel accounting office acknowledged Applicant's inability to upload, mail, or fax necessary paperwork, and reported the situation to Applicant's corporate director of OCONUS Operations. Applicant was promised a scanner, but it was never sent. Applicant obtained permission from his military commander to travel down to the large Air Force base to resolve the various corporate travel card account issues and get his CAC renewed, but Applicant's theatre lead again denied him permission to do so.

Upon receiving the newest denial, Applicant notified his theatre lead in person that he was resigning, and that upon getting access to the internet and a computer, he would e-mail his intentions to the corporate deputy program manager of business operations and the corporate director of OCONUS Operations. Applicant also called the corporate deputy program manager of business operations and told him the two reasons for resigning were the unresolved payroll and transportation issues and the "ineffective leadership," and sought guidance on out-processing. He was referred to someone else. On August 2, 2011, the theatre lead informed the corporate director of OCONUS Operations that he had "no idea where (Applicant) is located," and opined that Applicant had "been lying to [him] for quite some time about numerous things in addition to the other items we have discussed." As noted above, the theatre lead offered no examples regarding the assertion that Applicant had been lying to him for some time, and no statement or other evidence was offered in which the theatre lead disputed

Applicant's assertions regarding their relationship or that Applicant had personally informed him that he was resigning. This information directly contradicts the report by the theatre lead that Applicant was "supposed (sic) to report to work in Afghanistan but failed to report to in theatre lead. . . He did however arrive in country according to [military air] records." From that point on, there is a proliferation of misinformation by and among the various corporate offices related to Applicant. It is clear that, contrary to the SOR allegation, Applicant did, in fact, report for duty in Afghanistan in May 2011, as opposed to August 2011. The remaining portion of the SOR allegation is that Applicant's employment was terminated for his alleged failure to report for work.

When he finally gained access to a computer, Applicant sent his corporate director of OCONUS Operations a message confirming his resignation, and indicating that he would out-process and return all corporate materials to the corporate office. That action merely confirmed Applicant's earlier oral resignation. Nevertheless, the corporate director of OCONUS Operations, relying on the input from the theatre lead, erroneously reported Applicant "never did report to the theatre lead . . . as instructed and left country without processing or without authorization." On August 12, 2011, Applicant wrote the corporate offices and requested out-processing guidance, but it was not furnished. The evidence does not support the allegations that Applicant failed to report for work in August 2011, or that he was terminated for his failure to report for work. As to those allegations, AG ¶¶ 16(c) and 16(d) have not been established.

The remaining SOR allegation is that Applicant made unauthorized purchases, totaling \$5,466, on his corporate travel card. As noted above, the security supervisor reported that Applicant had made purchases that were not approved and that he had terminated his employment without paying the money back or setting up a payment plan. It also reported that the corporate legal department had sent Applicant a collections letter but that Applicant had still not made a payment or acknowledgment of the issue. There is no evidence that pre-approval of purchases was ever required. Other than the opinion of the security supervisor, there is little evidence to support the conclusion that the purchases were "not approved" or "unauthorized." The JPAS entry that the charges were not approved is insufficient to prove the charges were unauthorized. Furthermore, the characterization as applied to erroneous interpretations such as a charge in California clearly indicate Applicant had substantial reason to dispute the position of the corporation. The characterization of "unauthorized" or "not approved" without a scintilla of evidence to support that characterization, other than the JPAS entry, is insufficient to show questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Nevertheless, since that dispute has continued to the present, as to the corporate travel card, AG ¶ 16(d) only minimally applies, but AG ¶ 16(c) has not been established.

The guidelines also include examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(c) may apply if *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.* Also, AG ¶ 17(f) may apply if *the information was unsubstantiated or from a source of questionable reliability.*

With respect to the 1995 incident, based on the evidence, the conduct was relatively minor, 17 years have passed since it occurred, the action was isolated, and it happened under such unique circumstances, that it is unlikely to recur. Accordingly, as to this incident, AG ¶ 17(c) applies.

As to the entire environment and circumstances involving the issues that included Applicant's use of his corporate travel card and his resignation, I conclude the information was unsubstantiated or from sources of questionable reliability. Regarding the circumstances surrounding both issues, there is conflicting evidence. For the government, there is documentation containing conclusions which are based largely on interpretations of Applicant's actions and sometimes based on the input by the theatre lead. Those interpretations were sometimes supported by documentation, and sometimes not. While an employer's decisions and characterizations of events are generally entitled to some deference, I am not bound by those characterizations if they are contradicted by other internally inconsistent or implausible evidence and are erroneous.<sup>131</sup> This is not to say that I have uncritically accepted Applicant's version of what had taken place. However, under the circumstances presented by the evidence, Applicant's version seems more reasonable than the mere allegation of misconduct.

There is substantial evidence, including documentation and testimony from Applicant supporting Applicant's explanations regarding his frustrations over the theatre lead's actions and corporate intransigence in failing to facilitate Applicant's efforts to resolve the various issues confronting him, especially while he was assigned to the COP. That frustration was exacerbated by the theatre lead when he refused to allow Applicant to come to a facility where there were scanners or other means of communication available. Furthermore, the theatre lead's veracity is questioned when he informed the corporate director of OCONUS Operations that he had no idea where Applicant was located, and that Applicant had been lying to him for quite some time about numerous things in addition to the other items were discussed. This characteristic stands in stark contrast to Applicant's continuing efforts, commencing in June 2011, and continuing even until today, to resolve the issues confronting him. Applicant used his corporate travel card when traveling, and he resigned when he could not obtain corporate support in resolving the issues. He was not terminated for failure to report to work. The disparaging remarks and negative characterizations by the theatre lead, as repeated by other corporate personnel, stand in stark contrast to the positive characterizations made by Applicant's character witnesses – individuals who have known and worked with him over a number of years. There is no "questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that Applicant may not properly safeguard protected information." To the contrary, there is abundant evidence from the joint task force commander in Afghanistan and other character witnesses that Applicant possesses characteristics directly opposite to those characterizations. Based on all of the above, AG ¶¶ 17(c) and 17(f) apply.

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<sup>131</sup> See, e.g., *Anderson v. Bessemer City*, 470 U.S. 564 at 575 (1985); ISCR Case No. 10-03886 at 3-4 (App. Bd. April 26, 2012); ISCR Case No. 09-02839 at 4 (App. Bd. May 17, 2010).

## 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.

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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>132</sup>

According to Applicant's combined joint task force commander and a senior non-commissioned officer in the unit in Afghanistan, Applicant was vital to the unit's success. Applicant "worked tirelessly" to improve the ability of the COP to provide early detection of an attack, and he was a valued member in enhancing the unit's maneuverability and operability in the area. Applicant's attributes are loyalty, honesty, duty, dedication to detail, work ethic, highest degree of professionalism, and respect. Applicant was described by coworkers as a team player who is dependable, reliable, and intelligent, and a person who could always be counted on to put in more than his share of the work. A retired four-star general described Applicant as having a positive, can-do, attitude and desire to excel, with outstanding team leadership and technical competency, and tireless dedication to project timelines, as well as an impeccable character.

There is some evidence against mitigating Applicant's conduct. His handling of his finances permitted a number of accounts to become delinquent. As a result, accounts were placed for collection or sold. He furnished false information to law enforcement authorities in 1995. He engaged in continuing controversy with his employer, and finally resigned before resolving his corporate travel card balance.

The mitigating evidence under the whole-person concept is more substantial. Applicant has been described by those who have worked with him as honest, dependable, and reliable. He contacted his creditors and collection agents, tried to seek validation of accounts, and tried to work out repayment arrangements for those

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<sup>132</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

accounts he recognized. He also successfully disputed a number of accounts for various reasons. A number of such disputed accounts were subsequently either corrected or removed from his credit reports. Applicant completed financial management training. Applicant's indebtedness was not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Instead, his financial problems were caused by circumstances largely beyond his control. Applicant was able to resolve all but two of his accounts, including non-SOR accounts, and they have either been settled, paid off, or were removed from his credit report. The two remaining accounts, including the one pertaining to his corporate travel card, is in the process of being paid despite continuing controversy and dispute. The other remaining account is being paid under a repayment agreement. Under the circumstances, Applicant acted responsibly by addressing his delinquent accounts, and his actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>133</sup>

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated a "meaningful track record" of debt reduction and elimination. Applicant has made some significant timely efforts to resolve his accounts, but his efforts regarding his corporate travel card were essentially delayed by mischaracterizations and distortions made by corporate personnel. The allegations regarding failure to report for work, making unauthorized purchases on his corporate travel card, and being terminated, are all without foundation or credible support. Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has

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<sup>133</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).



mitigated the security concerns arising from his financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### **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
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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**ROBERT ROBINSON GALES**  
Administrative Judge