DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 18-02857
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric C. Price, Esq., Department Counsel
For Applicant: *Pro se*

08/29/2019

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Decision

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes a $70,000 collection debt to a foreign bank. He did not list that delinquency on his September 2017 security clearance application. Some extenuating circumstances led to him to default on the loan, but no payments have been made on the debt. His explanation for not listing the debt on his clearance application is implausible. Financial considerations and personal conduct security concerns are not mitigated. Clearance is denied.

Statement of the Case

On December 31, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The SOR explained why the DOD CAF 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 (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

(Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On January 14, 2019, Applicant responded to the SOR allegations and requested a decision based on the written record without a hearing by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On May 22, 2019, the Government submitted a File of Relevant Material (FORM), consisting of four exhibits (Items 1-4). DOHA forwarded a copy of the FORM to Applicant through his employer on May 23, 2019, and instructed him to respond within 30 days of receipt. Applicant received the FORM on June 17, 2019. No response to the FORM was received by the July 17, 2019 deadline. On August 16, 2019, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on August 21, 2019.

Findings of Fact

The SOR alleges under Guideline F that, as of the December 31, 2018 SOR, Applicant owed a $70,000 collection debt to a foreign bank (SOR ¶ 1.a). Under Guideline E, Applicant is alleged to have deliberately falsified his September 25, 2017 security clearance application by not disclosing the delinquent loan in response to a foreign financial interest inquiry (SOR ¶ 2.a) or to inquiries concerning delinquencies involving routine accounts in the last seven years (SOR ¶ 2.b). (Item 1.) When Applicant responded to the SOR allegations, he admitted the debt, which he indicated was "a one-off, highly unusual situation." He explained that he obtained the loan to consolidate debts and pay rent, but his employer then reneged on a $15,000 promised bonus, which placed him in a financial bind. He then made a "hasty, ill-advised decision" while on annual leave not to return to his job. Applicant denied that he intentionally failed to disclose his loan with a foreign bank, stating in part, "I did not give the account a second thought while filling out the form, as I considered it closed in my mind." (Item 2.) After considering the FORM, which includes Applicant's Answer to the SOR, I make the following findings of fact.

Applicant is a 52-year-old U.S. defense-contractor employee married to a foreign national. He has three adult stepchildren. He served honorably on active duty in the U.S. military from May 1987 until he retired at the rank of master sergeant in April 2010. At the time of his retirement, he held a Top Secret clearance. (Items 3-4.)

From April 2010 to September 2012, Applicant worked as a weapons technician for a defense contractor on a military installation in the United States. He owned his home, which he had purchased in October 2004. (Item 3.)

In September 2012, Applicant accepted a position as a weapons technician in a country in West Asia (foreign country X). He was promised a $15,000 bonus in his employment contract. His spouse moved to Europe, and Applicant rented out his home in the United States. Applicant's rent in foreign country X was $1,000 per month, with the rent due in six-month installments. His new employer fronted his rent for the first six months

while withdrawing the funds paid on his behalf from his paychecks starting immediately. Applicant indicated in response to the SOR that he lost his tenants in his U.S. home and was not able to save sufficient money to cover his rent due in April 2013 for the next six months. (Item 2.) The file does not contain any information about Applicant's employment income, his military retirement pay, his rental income from the home in the United States, or his mortgage payments for that home.

With rumors swirling on the job that his employer would not be paying the $15,000 bonus to its employees, Applicant obtained a loan of $68,064 from a bank in foreign country X to cover his rent and other bills and expenses. He borrowed additional funds from the bank to bring his loan balance to $70,000. When his employer reneged on the bonus, Applicant was placed in a financial bind. He made only six or seven payments on the bank loan. Facing pressure from his spouse to stay with her in Europe, Applicant resigned from his job in foreign country X in October 2013. (Items 2-4.)

From October 2013 to September 2017, Applicant lived off his military pension while earning his bachelor's degree online. He made no payments toward his loan with the foreign bank after he left foreign country X. In September 2017, Applicant began his current employment as an aircraft servicer with a U.S. defense contractor in Europe. (Item 3.) Applicant indicates that he now has his master's degree (Item 2), although he presented no details about how or when he earned that degree.

On September 25, 2017, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). Applicant listed his previous employment in foreign country X on his SF 86, and gave as his reason for leaving "Contract dispute. The company failed to pay our bonus." He did not list the defaulted loan with the foreign bank on his SF 86. He responded affirmatively to an inquiry concerning whether he, his spouse, or any dependent children have ever had any foreign financial interests in which he or they had direct control or direct ownership, such as "stocks, property, investments, bank accounts, ownership of corporate entities, corporate interests or exchange traded funds (ETFs) held in specific geographical or economic sectors," and disclosed his interests in the European country where he and his spouse reside. He responded "No" to a question concerning whether he, his spouse, or any dependent children, had any additional foreign financial interests. He also responded negatively to inquiries into any financial delinquency involving routine accounts in the last seven years, including whether he had defaulted on any type of loan in the past seven years; whether he had any bills or debts turned over to a collection agency in the past seven years; whether he had any account suspended, charged off, or cancelled for failing to pay as agreed in the last seven years; and whether he was currently over 120 days delinquent on any debt. (Item 3.)

On April 9, 2018, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). About foreign financial interests, he indicated that he and his spouse had closed their previous bank account in their locale and opened a new checking account with another bank in March 2018 because it did not charge fees, Applicant was then confronted with developed information about the loan with the bank in

foreign country X. He indicated that he had acquired the loan in 2012 to pay rent, bills, and extra expenses and to pay off a home that he owns in the United States; that he defaulted on the loan after only six to seven payments; and that he currently owes a collection balance of $70,000. He explained that he could not afford to repay the loan because he was not paid a bonus promised by his then employer. He admitted that he has been receiving notices about the debt from the foreign bank and that he had told the bank of his intention to repay the loan when he sells his home in the United States. Applicant asserted that his omission of the collection debt from his SF 86 was unintentional. He stated that he did not think of this collection account when completing his SF 86. In December 2018, Applicant adopted as accurate the summary report of his April 2019 interview containing these statements. (Item 4.)

Applicant maintains that his default on the loan with the foreign bank was "a one off, highly unusual situation" for him when considering the whole-person concept. He stated that he had a spotless credit rating before 2013, and that there were extenuating circumstances, including the loss of tenants in his U.S. property, which compromised his ability to pay his rent in foreign country X. As for his former employer's failure to pay him his $15,000 bonus, Applicant asserted without any corroboration that he had been contractually promised the bonus, but also that he had no recourse against his former employer. Under "immense family pressure" to return to Europe, he made "a hasty, ill-advised decision" to leave his job in foreign country X. He asserted that he has stabilized his situation over the past five years by earning both his undergraduate and master's degrees and obtaining his current job. He added that he has "taken a lessons learned approach so that nothing like that can affect [him] again." (Item 2.) He did not elaborate about the lessons learned.

Regarding the alleged deliberate omission of his defaulted loan from his SF 86, in response to the SOR, Applicant stated, in part:

> The [foreign bank] incident occurred over four years earlier and I did not give the account a second thought while filling out the form, as I considered it closed in my mind. While this certainly seems implausible, I can only offer to the Judge that when asked about the [foreign bank] account by the agent in my second interview, I immediately apologized to the officer and detailed in good-faith not only the account, but the circumstances surrounding the entire situation; the fact that it was a loan, what the loan was for, and that it was in arrears. In the same manner, I updated the officer on another [European] bank account that had been opened subsequent to the original interview. I gave this information willingly and promptly; there was never any refusal to disclose any information. (Item 2.)

Applicant also asserted in his response to the SOR that he has exceeded his supervisors' expectations in his current position and that he has performed his duties without incident, showing that he is still trustworthy and reliable. He expressed regret for the loan default ("this singular incident") which he submitted "was an anomaly in an otherwise long history of honorable service to America." (Item 2.)

The record contains a report of only one subject interview of Applicant, which was conducted on April 9, 2018, as summarized in Item 4. Applicant presented no documentation from his employer or co-workers attesting to the quality of his work performance. As of the close of the record in July 2019, he has made no payments since October 2013 on the defaulted $70,000 loan owed to the foreign bank. There is no evidence that Applicant has sold his property in the United States.

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(a), 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 national security eligibility will be resolved in favor of the 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 EO 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 articulated in AG ¶ 18:

> Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

> This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

Applicant defaulted on a $70,000 loan with a bank in foreign country X in 2013. He has made no payments on that loan since October 2013, and his account is in collection status. Disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(b), "unwillingness to satisfy debts regardless of the ability to do so," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Applicant bears the burdens of production and persuasion in mitigation. The following conditions under AG ¶ 20 have some applicability:

> (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; and
>
> (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.

AG ¶ 20(a) has some applicability in that his default of the loan does not appear to be characteristic of his handling of his finances generally. Even so, the debt is considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). Applicant has made no efforts since October 2013 to address this sizeable loan delinquency, for which he is legally liable. He admitted during his April 2018 subject interview that the bank was sending him notices about the debt, which was in collection status. His ongoing disregard of that debt continues to cast doubt about his judgment, reliability, and trustworthiness.

Concerning AG ¶ 20(b), Applicant knowingly took the position in foreign country X. His then employer fronted his rent for the first six months. It was not established that the employer violated the terms of Applicant's employment contract by immediately commencing recoupment of those funds from his pay. The loss of rental income from his U.S. property was an unexpected circumstance that led Applicant to acquire the loan from the foreign bank so that he could pay some bills. Applicant also had no control over his employer's decision to renege on his promised $15,000 bonus, which he planned to put toward his loan.

Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside of his control, I have to consider whether Applicant acted in a reasonable manner when dealing with his financial difficulties. *See* 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. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether Applicant remained in contact with his creditor and attempted to make repayment arrangements. Applicant made financial decisions in his self-interest. While on leave in 2013, he made a self-described "hasty, ill-advised decision" to remain in Europe with his spouse rather than return to his job in foreign country X. He is not faulted for putting his family first, but over the next four years, he lived off his military retirement income with no showing of any credible effort to obtain employment income that could have gone towards resolving his defaulted loan. He used some of the money borrowed from the foreign bank to pay off the mortgage on his home in the United States, and he has told the bank that he would repay his loan when he sold the house. There is no evidence that he has made any attempt to sell his U.S. property. The Appeal Board recently reiterated in ADP Case No. 17-0063 (App. Bd. Dec. 19, 2018) that "an applicant must demonstrate a plan for debt repayment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts." His failure to make any progress toward resolving his $70,000 collection debt raises considerable doubt about his willingness to pay it. The financial considerations security concerns are not mitigated.

Guideline E: Personal Conduct

The security concern about personal conduct is articulated 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Applicant certified to the accuracy of a September 2017 SF 86 on which he responded affirmatively to an inquiry concerning any foreign financial interests, and he listed only his interests in Europe. He responded "No" to an inquiry into any other foreign financial interests and to all of the inquiries involving any delinquency involving routine accounts in the last seven years, including questions specifically pertaining to loan defaults and debts turned over to a collection agency. Applicant denies any deliberate misrepresentation, explaining that, however "implausible" it may seem, he did not think about his defaulted loan with the bank in West Asia when he was completing the form, "as [he] considered it closed in [his] mind." He gave a similar explanation when he was asked about the omission during his April 2018 interview — that he did not think of the account when he was completing his security questionnaire — although he did not then explain why the debt did not occur to him at the time.

The Appeal Board has repeatedly held that, to establish a falsification, it is not enough merely to demonstrate that an applicant's answers were not true. To raise security concerns under Guideline E, the answers must be deliberately false. In analyzing an applicant's intent, the administrative judge must consider an applicant's answers in light of the record evidence as a whole. *See e.g.*, ISCR Case No. 14-05005 (App. Bd. Sep. 15, 2017): ISCR Case No. 10-04821 (App. Bd. May 21, 2012). The foreign financial interest inquiries may not have triggered Applicant's recall of his defaulted loan, given that the language focuses on foreign financial interests in which he, his spouse, or dependent children have had direct control or ownership, such as "stocks, property, investments, bank accounts, ownership of corporate entities, corporate interests or exchange traded funds (ETFs) held in specific geographical or economic sectors." A loan is an obligation, not an asset that one controls. However, no reasonable ambiguity exists as to whether Applicant was required to list the loan in response to the financial delinquency inquiries. The SF 86 financial inquiries concerning any delinquency involving routine accounts include the following questions: "In the last seven (7) years, [have] you defaulted on any type of loan?" and "In the last seven (7) years, [have] you had bills or debts turned over to a collection agency." He listed his employment in foreign country X on his SF 86, and he gave as his reason for leaving "Contract dispute. The company failed to pay our bonus." His experience in foreign country X was clearly on his mind when he completed his SF 86. Moreover, the evidence shows that Applicant disclosed the loan during his subject interview only after he was confronted about the loan. He admitted that he had received delinquent account notices from the foreign bank and that he knew the loan is in collections. Based on those

facts, it is disingenuous of Applicant to claim that he gave no thought to the debt because he considered it closed in his mind. His denial of deliberate falsification or omission is not persuasive. Disqualifying condition AG ¶ 16(a) applies because of his false responses to the relevant financial delinquency inquiries on his SF 86. AG ¶ 16(a) provides:

> (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Regarding possible mitigation under AG ¶ 17, Applicant stated in January 2019 that when asked about the account during his second interview, he immediately apologized and detailed the circumstances surrounding the loan. The FORM does not include any report of any interview other than the interview held on April 9, 2018. At that interview, Applicant had to be confronted about the defaulted loan before he was forthcoming with the details. AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," therefore does not apply. There is no evidence that Applicant omitted the information about his defaulted loan based on improper advice, so AG ¶ 17(b) also is not established. That mitigating condition states:

> (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a personal with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

Applicant's September 2017 deliberate omission of a $70,000 delinquent debt owed to a foreign bank is not considered so minor or so distant in the past. His apparent lack of initial candor about the debt during his subject interview brings the concerns about his judgment, reliability, and trustworthiness even more recent. AG ¶ 17(c) is not established. It provides:

> (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, Applicant's present denials of intentional falsification or omission do not show the reform needed for mitigation under AG ¶ 17(d), which states:

> (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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant has largely mitigated issues of potential vulnerability under AG ¶ 17(e),"the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress," by providing details about the debt during his background investigation, albeit after he was confronted. Yet it is unclear whether his current employer knows that he owes a substantial delinquency to a foreign bank that he continues to ignore. For the reasons noted, the personal conduct security concerns are not fully mitigated.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d):

> (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.

Some of the adjudicative process factors were addressed under Guideline F and Guideline E, but some warrant additional comment. Applicant accepted a job in West Asia only to leave the job one year later saddled with a $70,000 loan debt. He acquired the debt voluntarily, and he benefitted from the credit extended to him in that he paid off some bills and apparently the mortgage on his property in the United States. He asserts that he has taken "a lessons learned approach so that nothing like that can affect [him] again. By viewing his situation from the perspective of a victim of bad circumstances rather than taking responsibility for his own actions, Applicant has yet to demonstrate that he possesses the sound judgment and reliability that must be expected of persons entrusted with classified information. His years of military service are viewed favorably, but it is not enough to mitigate the financial considerations and personal conduct security concerns.

Security clearance decisions are not intended as punishment for past specific conduct. The security clearance assessment is a reasonable and careful evaluation of an applicant's circumstances and whether they cast doubt upon his judgment, self-control, and other characteristics essential to protecting national security information. Applicant presented little information to overcome the security concerns. 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). After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant

Conclusion

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

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Elizabeth M. Matchinski
Administrative Judge