DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 18-02315
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: Mark A. Myers, Esq. and Alan V. Edmunds, Esq.

01/28/2020

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Decision

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MURPHY, Braden M., Administrative Judge:

The Guideline K security concern is mitigated by the passage of time with no indication of repeated conduct. Applicant did not provide sufficient information to mitigate the Guideline E security concern arising from his use of countermeasures during an October 2017 polygraph examination. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 16, 2017. On October 23, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, personal conduct, and Guideline K, handling protected information. DOD CAF took the action under Executive Order 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on November 5, 2018, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on June 14, 2019. On July 19, 2019, DOHA issued a notice scheduling the hearing for September 10, 2019.

Applicant's hearing was held as scheduled. Department Counsel submitted Government's Exhibits (GE) 1-4. Applicant and one other witness testified. Applicant submitted Applicant's Exhibits (AE) A-H. All exhibits were admitted without objection. DOHA received the transcript on September 19, 2019.

Withdrawal of SOR Allegation

Department Counsel withdrew SOR ¶ 1.b, noting that it was not supported by record evidence. (Tr. 9-10)

Findings of Fact

Applicant denied SOR ¶¶ 1.a, 1.b (later withdrawn), and 2.b. He admitted SOR ¶ 2.a. His admission is incorporated into the findings of fact. After a thorough and careful review of the pleadings and the record evidence, I make the following additional findings of fact.

Applicant is 32 years old. He married in late 2012. He has an associate degree in engineering and is pursuing a bachelor's degree. He has worked for his current employer, in the defense industry, since February 2018. He needs a clearance for his job. He served on active duty in the U.S. Navy from 2007 to 2016, with a clearance, and is currently in the Navy Reserve as a first class petty officer (E-6). He has been awarded four Navy and Marine Corps Achievement Medals. (Tr. 33-35, 55-57, 64, 84-85; GE 1; AE B-H)

While on active duty in the Navy, Applicant was a crewman on Navy helicopters. He deployed overseas in 2009, for about seven months; in 2010, for about six or seven months; and in 2011, for about eight months. He had no overseas deployments after that. (Tr. 36, 41, 55-57, 64-65)

SOR ¶ 1.a alleges that between 2010 and 2014, Applicant knowingly divulged classified information to his spouse, without authorization. In his Answer, Applicant denied the allegation, asserting that he never knowingly divulged classified information.

Applicant met his future wife in 2005. He testified that while they had met prior to his first two deployments (2009 and 2010), they were not dating, so they were not in close communication at that time. (Tr. 42) They became a couple in 2011, and were in close contact during his third deployment, in 2011. They married in late 2012. (Tr. 69-70)

Applicant noted in his Answer that his future wife was concerned about his safety when he went on missions. When they spoke, he told her about some of his duties while on missions, because she knew that some duties he had to perform were more dangerous than others. (Answer; Tr. 73-74) He also told her if he had a "morning flight" or a "night flight," so she could know approximately when she might hear from him later that day, or at all, given the time difference with the United States. (Tr. 37-40, 44, 68, 73-74) He testified that other than the name of the mission, he never discussed specific timeframes, locations, or other mission particulars with his wife, such as "exact flying times." Rather he gave "ballpark" estimates. (Tr. 40, 62) Applicant also noted in his Answer that he should have been more careful about what he told his wife about his work, as "others could have been listening," including terrorists. (Answer)

Applicant left the Navy in November 2016. He then applied for a job with another government agency (AGA). The job application process included a polygraph examination. (Tr. 45) Applicant testified that he was told not to do any research on how to "beat a polygraph," either on the Internet, or from movies or television. (Tr. 46-48, 80-81) He said he was told "to go in there and, you know, just be myself, and that's what I did." (Tr. 47)

Applicant denied getting information about polygraphs from movies and television shows, either in preparation for the polygraph or earlier. He testified that he has been an athlete since high school. He said that through both athletic and military training, he learned how to "slow and deepen" his breaths after exercising to slow his heart rate down. (Tr. 82-83)

Applicant reported for the polygraph in October 2017. (GE 2, 3, 4) SOR ¶ 2.a alleges that he "deliberately attempted to control his breathing in order to slow his heart rate" during the polygraph. In his Answer, Applicant admitted that he had tried to slow down his heart rate. He said he "felt very nervous, like standing up in front of a crowd. I was attempting to slow my heartrate down. I have always done this when giving a speech. It felt like a very intense situation to me." (Answer; Tr. 63) Applicant similarly testified that he was "a nervous wreck," and he was "just trying to re-gather myself" and "kind of calm myself down." (Tr. 44, 49, 62-63) Applicant denied that his attempts to control his breathing by breathing deeper were an attempt to influence the outcome of the polygraph. (Tr. 50)

Applicant testified that after the polygraph, the examiner told him he had failed, and asked him if he had "anything else" he wanted to add. (Tr. 50-51, 76) He said he was given a choice, either to retake the polygraph or to provide a sworn statement. Applicant then made additional disclosures, detailed in a contemporaneous sworn statement. (Tr. 52, 54, 76, 78-79)

In the sworn statement, Applicant said, "During the polygraph exam, I was trying to control my breathing to slow my heart rate down. I had held back information that I later told [the examiner], and included in this statement." (GE 3 at 2) Applicant stated that he "felt I had to pass the poly exam, so [I] decided to try to control my heart rate,

which just caused me to need to breathe deeper during other questions. I let information about polygraph exams I learned from movies and TV shows cloud my head. The purpose I was trying to control my breathing to pass the exam only." [Sic] (GE 3 at 2)

Applicant also stated:

> I mentioned classified information secret level to my wife, during my 3 deployments to [the Middle East]. Information was details about mission specifications, trying to make her understand what I was doing, so she did not cause additional stress. It provided a decompression for me as well. [It] happened during the years 2010-2014. I mentioned and was stern about her not repeating anything to anybody. (GE 3 at 1; Tr. 62)

Applicant testified that when he wrote in his sworn statement that, "I mentioned classified information" to his wife, and then added the words "secret level" later. (Tr. 57-58) My viewing of GE 3 comports with this. He testified that he added those words at the prompting of the examiner. (Tr. 57-58) Applicant acknowledged during his testimony that he wrote GE 3, signed it, and had a chance to review it before he did so. (Tr. 75)

Applicant also testified that he was unsure if the information he disclosed to his future wife was "classified" or "sensitive," and at one point said the information might have been "neither." (Tr. 57-60, 72) Applicant also testified that other air crew members shared similar information with their spouses or parents. (Tr. 40, 61) He said, "I strongly believe that what I shared with my wife was not inappropriate or sensitive to the nature of the mission." (Tr. 72)

SOR ¶ 2.b, which Applicant denied, alleges that Applicant "withheld information" during the polygraph. The language in SOR ¶ 2.b does not specify what information was allegedly withheld. There was no testimony at the hearing from the polygraph examiner that might have shed light on this allegation. There is only the sentence in GE 3 in which Applicant stated that he "held back information that I later told [the examiner], and included in this statement."

At his hearing, Applicant denied withholding information from the examiner. He testified that he provided honest answers. (Tr. 53) He testified that he was not asked a question during the polygraph that would have led him to truthfully disclose the information he told his wife. He said he was asked, "Did I intentionally or knowingly disclose any classified information? And the answer is, 'no, I have definitely not done that.'" (Tr. 77)

The polygraph report from the AGA notes that Applicant "admitted to employing countermeasures during the examination," and noted that he "admitted to engaging in a deliberate attempt to alter the natural outcome of the examination." The "Exam Result" is noted as "No Opinion – Countermeasures." (GE 2) Applicant received a tentative job offer from the AGA, but it was revoked following the polygraph. (Tr. 83)

Applicant's former supervisor testified. He called Applicant "one of the best men I've ever had work for me." He said that Applicant's work performance was outstanding and exemplary. He testified that Applicant is honest, of high character, is very trustworthy, and should be eligible for a clearance. (Tr. 23-33; AE A)

A Navy lieutenant in Applicant's unit provided a reference letter in which he attested to Applicant's growth, talent, responsibility, maturity, professionalism, integrity, intelligence, and "strong ethical compass." He regards Applicant as a tremendous asset to any government agency and deserving of the public's trust. (AE A)

A friend and co-worker attested that Applicant is smart, talented, and responsible. Applicant has a high degree of integrity and ambitiousness. He is professional and has excellent communications skills. (AE A)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of Navy v. Egan*, 484 U.S. 518, 531 (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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

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

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

Analysis

Given the nature of the allegations, I note the following about the hearing and the record evidence:

The hearing was unclassified. I therefore instructed the participants at the outset that no classified information was to be discussed, revealed, or otherwise introduced. SOR ¶ 1.a alleges that Applicant divulged certain classified information to his wife, without authorization. There is no documentary evidence in the record of that information itself, classified or otherwise. The only record evidence of the information at issue in SOR ¶ 1.a is from Applicant himself: in his Answer; in a sworn statement (GE 3), which references certain information as being "classified;" and in his hearing testimony, which addressed, in general terms, the nature of the information.

Guideline K, Handling Protected Information

AG ¶ 33 details the Guideline K security concern:

> Deliberate or negligent failure to comply with rules and regulations for handling protected information – which includes classified and other sensitive government information, and proprietary information - raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

Security clearance cases require administrative judges to assess whether an applicant has the requisite good judgment, reliability, and trustworthiness to be entrusted with classified information. When evidence is presented that an applicant previously mishandled classified information or violated a rule or regulation for the protection of protected information such an applicant bears a heavy burden in demonstrating that he or she should once again be found eligible for a security clearance. ISCR Case No. 11-12202 at 5 (App. Bd. Jun. 23, 2014).

AG ¶ 34 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

> (a) deliberate or negligent disclosure of protected information to unauthorized persons, including, but not limited to, personal or business contacts . . . ; and
>
> (g) any failure to comply with rules for the protection of classified or other sensitive information.

When Applicant was serving in the Navy as a helicopter crewman, he deployed overseas in 2009, 2010, and 2011. During some of this period, Applicant and his future wife were in a close relationship and in close and frequent contact, at least during his third deployment, in 2011. I consider the reference to the "2010-2014" in both SOR ¶ 1.a and in GE 3 to be a general timeframe. Given Applicant's testimony that he did not return to the overseas location after 2011, later dates are likely erroneous. I also consider that when Applicant referred to his "wife" in discussing the timeframe of this allegation, as he did in the Answer, the sworn statement, and in his testimony, he actually meant his "future wife," since they are the same person.

During some of their phone calls with his future wife during the 2011 deployment, Applicant told her certain information about his roles and responsibilities, and also information such as whether the missions were "morning flights" or "night flights." He did this in an attempt to put her mind at ease about his missions and duties, and to give some indication about when she might hear from him again.

Applicant indicated in his post-polygraph sworn statement that he provided "classified information [at the] secret level" to his (future) wife during these conversations. At his hearing, he hedged significantly about the nature of the information he disclosed to her, noting that he was unsure if the information was "classified" or "sensitive," and at one point said the information might have been "neither." He also testified that other air crew members shared similar information with close family members. Applicant's testimony on these points is unsupported. However, as noted above, the only record evidence that the information was "classified" is Applicant's own sworn statement, GE 3.

Applicant's disclosures of mission-oriented information to his future wife during deployment may have been with the best of intentions. It may have been common practice among members of his unit. It may, in fact, have involved information that while sensitive, was not actually classified. But that is not established by the record in this case. GE 3 is a sworn statement from Applicant that he wrote, reviewed, had an opportunity to edit, and signed. In the sworn statement, Applicant also acknowledged that he disclosed classified information to his future wife. Further, he added the words "secret level" while reviewing the document. Given these circumstances, the evidence supports a conclusion that Applicant believed when he made his sworn statement that the information he disclosed was, in fact, classified. Such evidence is sufficient for the

purposes of making a clearance decision. AG ¶¶ 34(a) and (g) apply, even if the information was sensitive and unclassified, as there is no indication that his future wife was authorized to receive it.

The following conditions could potentially mitigate security concerns in AG ¶ 35:

> (a) so much time has elapsed since the behavior, or it happened so infrequently or under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
>
> (b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities;
>
> (c) the security violations were due to improper or inadequate training or unclear instructions; and
>
> (d) the violation was inadvertent, it was promptly reported, there is no evidence of compromise, and it does not suggest a pattern.

Applicant's disclosures to his future wife while on deployment did not come to light when he made them. Thus, there was no determination made by security authorities about whether the disclosures constituted security violations, whether there was a compromise, or whether his disclosures were part of a pattern. Applicant was also not in position to be counseled or retrained. AG ¶¶ 35(b), (c), and (d) therefore do not fully apply.

Regardless of the level of restrictions on the information Applicant disclosed to his future wife, and regardless of whether it was commonplace for others to have disclosed similar information to their family members, Applicant recognizes he should not have done it. In his Answer to the SOR, he admitted that he should have been more aware of who might have been listening to their conversations, and he is now more cognizant of the need to avoid such disclosures. The disclosures also occurred during a deployment in 2011 – about eight years before the hearing. There is also no indication that they have been repeated. AG ¶ 35(a) therefore applies.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security

> investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:
>
> (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and
>
> (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

> (b) deliberately providing false or misleading information, or concealing or omitting information, concerning relevant facts to an employer, investigator, security official . . . or other government representative.

Applicant testified that he was a "nervous wreck" when he took the polygraph examination, and that he was "just trying to re-gather myself" and "kind of calm myself down." He admitted that he attempted to control his breathing in an effort to slow his heart rate during the October 2017 polygraph. (SOR ¶ 2.a) He denied, however, that these attempts to control his breathing by breathing deeper were an attempt to influence the outcome of the polygraph. However, in his sworn statement, he acknowledged that he "felt I had to pass the polygraph, so decided to try to control my heart rate, which just caused me to need to breathe deeper during other questions." Applicant's sworn statement therefore contradicts his hearing testimony on this point.

In both Applicant's sworn statement and his testimony, he noted that he learned information about polygraphs from movies and television shows, but he did not provide any specifics about where he learned such information. He denied doing any pre-polygraph research in this regard. Applicant also testified that he used breathing techniques that he learned as an athlete and during his military training, to control his breathing and lower his heart rate during the polygraph.

Under "Exam Result," the polygraph report states, "No Opinion: Countermeasures." Under Appeal Board precedent, I am not permitted to consider the results of a polygraph report. *See* ISCR Case No. 15-07539 at 5, n. 3 (App. Bd. Oct. 18, 2018)("The actual polygraph results are not disclosed in the record, and, in any event, are not proper matters for our consideration. Statements made in response to questioning during a polygraph examination are admissible, although the results of the exam itself are not." *See, e.g.*, ISCR Case No. 02-31428 at 4 (App. Bd. Jan. 20, 2006)).

Here, though, it is not the results of the polygraph I am considering, but rather that there *were no results* – because Applicant used countermeasures. I discount Applicant's testimony that the examiner told him he "failed" the polygraph. He testified that he was offered another opportunity to take it. This suggests not that he failed the first test, but that the results were somehow corrupted or incomplete. The fact that Applicant was found to have used countermeasures (and also admitted doing so) is not only admissible and relevant, it is a fact of security significance. In ISCR Case No. 11-03452 (App. Bd. Jun. 6, 2012) the Appeal Board held that using countermeasures to influence the outcome of a polygraph exam constitutes a Guideline E security concern. Such conduct evidences not only poor judgment, but also a failure to cooperate with the security clearance process under AG ¶¶ 15 and 15(a).

SOR ¶ 2.b alleges that Applicant intentionally withheld information during the polygraph. The allegation does not detail what information Applicant allegedly withheld. The polygraph examiner did not testify. There is only the sentence in GE 3 in which Applicant stated that he "held back information that I later told [the examiner], and included in this statement."

At his hearing, Applicant denied withholding information from the examiner. He testified that he provided honest answers. (Tr. 53) Applicant testified that he was not asked a question during the polygraph that would have led him to truthfully disclose the information he told his wife. He said he was asked, "Did I intentionally or knowingly disclose any classified information? And the answer is, 'no, I have definitely not done that.'"

I find that SOR ¶ 2.b, which Applicant denied, does not set forth with sufficient specificity the information Applicant allegedly withheld during the polygraph. Further, the sworn statement, by itself, does not provide sufficient information on this point to establish disqualifying conduct.

AG ¶ 17 sets forth the applicable mitigating conditions under Guideline E:

> (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
>
> (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant acknowledged during his post-polygraph sworn statement that he used countermeasures during the exam and withheld information from the examiner. The sworn statement was prepared shortly after Applicant was told by the examiner that (in Applicant's words) he had "failed" the exam. AG ¶ 17(a) therefore has some application.

But Applicant's attempt to impact the results by trying to control his breathing is not minor. The Appeal Board considers that breathing efforts such as what Applicant did to be countermeasures and also a failure to cooperate. Further, the fact that under Guideline E AG ¶¶ 15(a) and (b), such acts "will normally result in an unfavorable national security determination" precludes application of AG ¶ 17(c).

Whole-Person Concept

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and K in my whole-person analysis.

The sole surviving Guideline K allegation is based on a sworn statement from Applicant himself, and not on independent evidence, documented or otherwise. The sworn statement is enough, in this forum, to support a finding that the information Applicant disclosed to his future wife was classified. Any disclosures of classified information to unauthorized recipients are problematic. But the sole Guideline K allegation here is mitigated: first, because of its age; second, because there is no evidence of repeated conduct; and third, because Applicant now has a better understanding of the security risk of such disclosures.

Of the two Guideline E allegations, one of them is not established with sufficient specificity, given Applicant's denial, and the state of the record evidence. This leaves the Guideline E allegation that Applicant admits – that he attempted to control his breathing during the polygraph exam. At hearing, he denied that his actions were an attempt to impact the results of the exam. In his sworn statement, however, he said otherwise.

Like Applicant's disclosures on deployment, his actions during the polygraph may also have been taken with the best of intentions. But the fact remains he acknowledged using countermeasures to influence the result of the polygraph. This was an act of poor judgment, and one the Appeal Board regards as security significant. And unlike the disclosures to his future wife while on deployment, Applicant's actions during the polygraph are also quite recent, as they occurred in October 2017.

I considered Applicant's hearing testimony and the other record evidence he provided, particularly his explanations about his rationale for his actions. I also considered Applicant's whole-person character evidence, including the strong testimony of his former supervisor, as well as the other whole-person evidence provided.

On the whole, despite this favorable evidence, I conclude that Applicant has not mitigated the security concern shown by his use of countermeasures during the polygraph. He has not met his burden of establishing that he is a suitable candidate for access to classified information. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility for access to classified information.

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

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. Eligibility for access to classified information is denied.

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Braden M. Murphy
Administrative Judge