



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case No. 24-01129
)
)

Appearances

For Government: Jenny G. Bayer, Esq., Department Counsel
For Applicant: *Pro se*

05/13/2025

Decision

HARVEY, Mark, Administrative Judge:

Guideline F (financial considerations) security concerns are not mitigated.
Eligibility for access to classified information is denied.

Statement of the Case

On July 6, 2023, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On August 16, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A, the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the Defense Office of Hearings and Appeals (DOHA) did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended

referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. (HE 2) On October 19, 2024, Applicant provided his response to the SOR. (HE 3) On December 2, 2024, Department Counsel was ready to proceed. On December 11, 2024, the case was assigned to me. On December 13, 2024, DOHA issued a notice setting the hearing for February 20, 2025. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered seven exhibits into evidence, and Applicant did not offer any exhibits into evidence. (Tr. 11, 18-20; GE 1-GE 7) All proffered exhibits were admitted into evidence without objection. On March 3, 2025, DOHA received a copy of the transcript. He did not provide any post-hearing appearance exhibits. The record closed on April 21, 2025. (Tr. 58. 63)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1.n, except for SOR ¶ 1.m. (Tr. 14) He also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is 51 years old, and he has been a customer service representative since June of 2023. (Tr. 7-8) In 1992, he graduated from high school. (Tr. 7) He has a few college credits, and he has not received a degree. (Tr. 7) He has not served in the military. (Tr. 7) His annual salary is about \$38,000 (rounded to nearest \$1,000). (Tr. 8, 23) Applicant has been married four times. (Tr. 9) He was divorced in 1999, 2006, and 2013. (GE 1) He was most recently married in September of 2024. (Tr. 9) His daughter is 28 years old. (Tr. 10)

Financial Considerations

Applicant said his credit score improved on his most recent credit bureau reports (CBRs), which is an indication he was making efforts to improve his credit and finances. (Tr. 21-23, 45; GE 4, GE 7) He wanted to eventually be able to purchase a home. (Tr. 45) He received a \$1-an-hour wage increase about 11 months ago to \$22 an hour. (Tr. 24)

Applicant was employed for 14 years working for a cable company until he lost his employment in October 2018, and he was unable to find new employment due to the COVID 19 pandemic and business reorganizations. (Tr. 32-35) He was underemployed for a time or briefly employed for several years. (Tr. 35-38) His spouse is disabled, and they are in the process of applying for disability payments for her. (Tr. 25) His spouse has two children aged 14 and 17 who live in Applicant's household and have special needs. His spouse receives \$500 monthly of child support. (Tr. 26) Applicant has unreimbursed medical expenses. (Tr. 27) The children are on Medicaid or Medicare. (Tr. 28-29) He pays

\$150 monthly for his own prescriptions. (Tr. 28) His spouse's medications are covered by insurance, Medicare, or Medicaid. (Tr. 28-29) He does not use a written budget. (Tr. 29)

Applicant has not received financial counseling. (Tr. 31) He uses financial software to track his finances. (Tr. 29-30) At the end of each month after paying his expenses, he has a remainder of about \$250. (Tr. 30) He has about \$500 in his checking account, nothing in his savings account, and no 401(k) retirement account. (Tr. 32) He agreed that the SOR debts in ¶¶ 1.c through 1.n were his accounts. (Tr. 48, 57)

SOR ¶¶ 1.a and 1.b allege Applicant failed to file as required his federal and state income tax returns for tax year (TY) 2020, and his state income tax return for TY 2021, respectively. At the time of his hearing, Applicant had not filed his TY 2020 federal and state income tax returns and his state tax return for TY 2021. (Tr. 40, 42) He said he did not file his tax returns because he did not have a W2 form from his employer. (Tr. 40) He was relying on the IRS to prepare a substitute federal income tax return for him. (Tr. 41)

Applicant had delinquent taxes from TY 2019. (Tr. 42, 53) The IRS intercepted refunds for other years and used the refunds to pay his TY 2019 tax bill. (Tr. 42, 54)

Applicant's IRS tax transcript for TY 2020 shows "no tax return filed." (GE 5 at 21-22) His IRS tax transcript for TY 2021 indicates his tax return was timely filed, and no taxes are owed; however, it indicates his income was \$0. (GE 5 at 19-20) His IRS tax transcript for TY 2022 shows his tax return was filed on December 4, 2023; his adjusted gross income was about \$44,000 (rounded to nearest \$1,000), and zero taxes are owed. (GE 5 at 18-19)

SOR ¶¶ 1.c through 1.j allege Applicant has eight accounts placed for collection for about \$774, \$962, \$612, \$1,304, \$737, \$173, \$677, and \$1,604. respectively. SOR ¶¶ 1.k through 1.n has four charged-off accounts for about \$818, \$476, \$720, and \$1,604, respectively.

The balance of Applicant's SOR ¶ 1.f account was \$4,304; however, the SOR alleged \$1,304. (Tr. 47) The accounts in SOR ¶¶ 1.c through 1.j were opened from about 2018 and to about 2023, and became delinquent from about 2021 to about 2024. (Tr. 42-51) He did not make any payments to any of the SOR creditors. (Tr. 43, 45, 48, 50)

Applicant's February 13, 2025 CBR lists all of the SOR debts as delinquent except for the debts in SOR ¶¶ 1.c (\$774), 1.h (\$173), and 1.i (\$476), which do not appear on this CBR. (GE 7)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual

is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

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

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(f), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions are contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 which may be applicable in this case are as follows:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The Appeal Board in ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013) explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant provided some important mitigating information. He had periods of unemployment and underemployment, and his spouse and children had medical

problems. These issues adversely affected his finances. However, “[e]ven if [an applicant’s] financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the [administrative judge] could still consider whether [the 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. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). Applicant did not provide enough details to prove he acted reasonably and responsibly under all the circumstances.

Applicant failed to file as required his federal and state income tax returns for TY 2020 and his state income tax return for TY 2021. He did not indicate he filed his overdue tax returns at his hearing.

Recently, the Appeal Board in ISCR Case No. 23-00254 at 3 (App. Bd. Sept. 9, 2024) said:

A security clearance adjudication is not a proceeding aimed at inducing an applicant to meet his or her duty to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant’s judgment, reliability, and trustworthiness. E.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). Accordingly, even though Applicant eventually filed his tax returns [in the case under appeal], the Judge was obligated to consider the facts and circumstances surrounding the failure to timely meet tax obligations. *Id.*

A willful failure to timely make (means complete and file with the IRS) a federal income tax return is a misdemeanor-level federal criminal offense. Title 26 U.S.C. § 7203, willful failure to file return or supply information, reads:

Any person . . . required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to . . . make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor. . . .

A willful failure to make return, keep records, or supply information when required, is a misdemeanor without regard to the existence of any tax liability. *Spies v. United States*, 317 U.S. 492 (1943); *United States v. Walker*, 479 F.2d 407 (9th Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7th Cir. 1969); *O’Brien v. United States*, 51 F.2d 193 (7th Cir. 1931). For purposes of this decision, I am not weighing Applicant’s failure to timely file his federal income tax returns against him as a crime. Regarding the failure to timely file a federal income tax return, the Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting

debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns*. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted); ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). The Appeal Board clarified that even in instances where an “[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant’s security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility,” including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 & n.3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an applicant’s course of conduct and employing an “all’s well that ends well” analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

The Appeal Board in ISCR Case No. 15-01031 (App. Bd. June 15, 2016) explained that in some situations, even if no taxes are owed when tax returns are not timely filed, grant of access to classified information is inappropriate. In that case, the applicant filed his 2011 federal income tax return in December 2013, his 2012 federal tax return in September 2014, and his 2013 federal tax return in October 2015. He received federal tax refunds of at least \$1,000 for each year. Nevertheless, the Appeal Board reversed the administrative judge’s decision to grant access to classified information. *Id.*

In ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017) the Appeal Board reversed the grant of a security clearance, discussed how AG ¶ 20(g) applied, and noted:

The timing of the resolution of financial problems is an important factor in evaluating an applicant’s case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests. In this case, applicant’s filing of his [f]ederal income tax returns for 2009-2014 after submitting his SCA, undergoing his background interview, or receiving the SOR undercuts the weight such remedial action might otherwise merit.

In this case, Applicant’s SOR listed 12 delinquent accounts. His February 13, 2025 CBR lists all of the SOR debts as delinquent except for the debts in SOR ¶¶ 1.c (\$774),

1.h (\$173), and 1.i (\$476), which do not appear on this credit report. “[T]hat some debts have dropped off his [or her] credit report is not meaningful evidence of debt resolution.” ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. See Title 15 U.S.C. § 1681c. Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company’s request for information, or when the debt has been charged off.

“[U]ntil an applicant has a meaningful financial track record, it cannot be said as a matter of law that he has initiated a good-faith effort to repay overdue creditors or otherwise resolved debts. The phrase ‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment on debts.” ISCR 22-02226 at 2 (App. Bd. Oct. 27, 2023) (citing ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007)).

Applicant did not provide evidence that he maintained contact with several of his creditors. He does not have a payment plan to address most of his delinquent debts, and he has not made any payments to his SOR creditors. I am not confident that he will establish payment plans, pay, or otherwise resolve these SOR debts, and maintain his financial responsibility. Under all the circumstances, none of the mitigating conditions fully apply to the SOR allegations. Financial considerations security concerns are not 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 the Applicant’s conduct and all the 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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall common-sense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 51 years old, and he has been a customer service representative since June of 2023. In 1992, he graduated from high school. He has a few college credits, and he has not received a degree. His annual salary is about \$38,000 (rounded to nearest \$1,000). He said his credit score improved from the dates of his two most recent CBRs, which is an indication that he was making efforts to improve his credit and finances. He received a \$1-an-hour wage increase about 11 months ago to \$22 an hour, which is an indication that he is a good employee.

The evidence against grant of a security clearance is detailed in the financial considerations section, *supra*, and the evidence against mitigation is more persuasive. Applicant did not establish that he was making payments to his SOR creditors or that he is establishing payment plans to address his SOR debts. He failed to timely file his federal and state income tax returns for TY 2020 and his state income tax return for TY 2021. His failure to take timely, prudent, responsible, and good-faith actions regarding his taxes and other debts raise unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards resolution of his tax and delinquent debt issues, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations security concerns.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
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Subparagraphs 1.a through 1.n:	Against Applicant
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Conclusion

Considering all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge