

DATE: October 31, 2007

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In Re: )  
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----- ) ISCR Case No. 04-10840  
SSN: ----- )  
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Applicant for Security Clearance )  
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**DECISION OF ADMINISTRATIVE JUDGE  
BARRY M SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Goldstein, Esquire, Department Counsel

**FOR APPLICANT**

B. Daniel Lynch, esquire  
B. Daniel Lynch Law Offices

**SYNOPSIS**

This 63-year-old engineer has a history of failing to comply with rules and regulations for protecting classified material, but the violations ended in about April 2004. On his 2004 security clearance application, he failed to report a long period of part-time self employment that paralleled his full-time main position with a defense contractor. This activity continued for some 30 years and was known by friends and colleagues. He averred that he was not aware he was doing anything wrong, until informed by a Government investigator, at which time he ceased operations. It is not clear his outside activities were of a nature that violates Guidelines E and L restrictions. Mitigation has been established. Clearance is granted.

## **FINDINGS OF FACT**

Applicant is a 63-year-old systems engineer for a defense contractor. The SOR, as amended, contains nine (9) allegations under Guideline K (Deliberate or Negligent Failure to Comply with Rules and Regulations); five (5) allegations under Guideline E (Personal Conduct); and three (3) allegations under Guideline L (Outside Business Conflict of Interest). Applicant admits all allegations under Guideline K, all with explanations. He denies all Guideline E and L allegations. All specific admissions are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, including testimony and all exhibits, I make the following additional FINDINGS OF FACT as to the status of each SOR allegation.

### ***Guideline K (Deliberate or Intentional Failure to comply with Rules and Regulations for Protecting Classified or other Sensitive Information)***

Applicant's employer is a major defense contractor and provides periodic security training and material to all of its employees working with classified material, including Applicant, who has been with the company for about 40 years (GX 1 and Tr at 52-56). The company's Facility Security Officer, who had examined the comprehensive file on Applicant discussed his history of security violations in considerable detail (Tr at 64-73).

Applicant has a long history of failing to adequately protect classified material, in each case violating one or more provisions of the version of the National Industrial Security Program Operating Manual (NISPOM) applicable at the time.

1.a. On or about September 28, 1984, Applicant did not intentionally or negligently fail to properly secure a DoD security container, in violation of paragraph 14.a.(3) of the NISPOM, dated March 1984.

1.b. On or about June 18, 1985, Applicant did not intentionally or negligently fail to properly secure a DoD security container, in violation of paragraph 14.a.(3) of the NISPOM, dated March 1984. His container privileges were suspended for one year.

As to both allegations, it was subsequently discovered by the company locksmith that the lock in question was defective and could be opened by a hard "yank," even if properly closed and turned. As result culpability on Applicant's part could not be established.

1.c. In about February 1986, Applicant failed to obtain a receipt for a classified document he had loaned to a co-worker and could not account for its location, in violation of paragraphs 12.a., 12.b., and 12.c. of the NISPOM, dated March 1984.

1.d. Between April 1997 and October 1997, Applicant failed to comply with approved AIS (Automated Information Systems) audit requirements at his company, in violation of paragraphs 8-102.b.(9) and 8-303 of the NISPOM, dated January 1995.

1.e. Between November 1997 and December 1997, Applicant failed to comply with AIS approved audit requirements at his company, in violation of paragraphs 8-102.b.(9) and 8-303 of the NISPOM, dated January 1995.

1.f. On or about November 28, 2001, Applicant failed to properly secure the H-2 Protected Area at his company, in violation of paragraph 5-207 of the NISPOM, dated January 1995, and his company's written policy regarding "Closed Area Security Procedures." He was verbally counseled by his supervisor.

1.g. On or about December 5, 2001, Applicant failed to properly secure the H-2 Protected Area at his company, in violation of paragraph 5-207 of the NISPOM, dated January 1995, and his company's written policy regarding "Closed Area Security Procedures." He was verbally counseled by his supervisor.

1.h. On or about May 2, 2002, Applicant failed to properly secure the H-2 Protected Area at his company, in violation of paragraph 5-207 of the NISPOM, dated January 1995, and his company's written policy regarding "Closed Area Security Procedures." He was verbally counseled by his supervisor.

1.i. On or about September 17, 2002, Applicant failed to properly secure the H-2 Protected Area at his company, in violation of paragraph 5-207 of the NISPOM, dated January 1995, and his company's written policy regarding "Closed Area Security Procedures." He was verbally counseled by his supervisor.

1.j. On or about December 7, 2002, Applicant failed to secure a classified container at his company, in violation of paragraphs 5-100 and 5-303 of the NISPOM, dated January 1995.

1.k. On or about April 17, 2003, Applicant transferred a classified document onto an unclassified server, in violation of paragraphs 5-100 and 8.501.c.(3) of the NISPOM, dated January 1995, as amended May 1, 2000. He was verbally counseled by his supervisor and was given a five-day suspension from work without pay.

#### ***Guideline E (Personal Conduct)***

2.a.(1) - Applicant omitted material facts on a Security Clearance Application (SF 86), electronically submitted on or about February 20, 2004. In response to Question "6. List your employment activities, beginning with the present and working back seven years," and

including period of self employment. Applicant cited his work for his present employer, but failed to mention his ownership and operation, from 1984 to 2004, as sole proprietor of a business that refurbishes vintage aircraft. He considered the activity to be a not-for-profit hobby and not the type of activity required to be reported. In context, I find his explanation to be credible.

2.b. - Applicant failed to report his ownership of the business cited in 2.a., above, and his business involvement with the two procurement companies cited in 3.a and 3.b., below, to his employer. However, Applicant's outside activity does not appear to have any connection to or with his full time employment and therefore does not come within the scope of Company policy, as stated in General Policies and Procedures, Conflicts of Interest and Standards of Ethical Conduct and therefor lacks security significance.

2.c. Alleges that Applicant failed to provide an amended security clearance application when advised by his present employers personnel that an SF 86 submitted or about February 20, 2004 contained errors. Applicant denies this allegation and states he does not have any specific recollection of this matter. A review of the Government's exhibits does not reveal any document (s) supporting the allegation. Applicant points out that his SF 86 (GX 1) is "substantially complete" and what he did receive was a "Return Notice" stating that no SF 86 was required since it had been less than 15 years since his clearance was issued.

He interpreted this letter to mean that he was not being asked to submit a new SF. The return letter relates only to the new Government policy that companies can no longer retain a copy of an employee's SF 86. The company was returning the SF 86 to Applicant with a recommendation that he retain it in his files for any future use. The memorandum declines a request from the Company Facility Security Officer to initiate a new investigation at the time because the clearance was not yet 15 years old. None of this suggests that Applicant had been asked to submit a new SF 86 because of errors in the previous one.

#### ***Guideline L (Outside Activities)***

3.a. Applicant has been employed by his present company since 1966. He is currently a "Principle Systems Engineer." In addition, since 1973, he has operated as a consulting engineer and, since 1984, he has operated a sole proprietorship, as cited in 2.a. (1), above.

3.b. From about the early 1990s to at least about 2000, Applicant had business contacts, through his company, cited in 2.a.(1), above, with Company A, which provides United States out of date manufactured spare parts, or parts made by him, to foreign governments, including aircraft parts to a foreign Air Force and Navy.

3.c. Applicant also has business contacts with another procurement company (Company B), to which he was introduced by Company A. Applicant has also made aircraft parts for Company B.

Applicant has long been considered capable and an asset to his employer. As long ago as 1981 he was given signature authority in the absence of his Director (AX A). In 2002 and 2005, he received Achievement Awards. He completed a DoD Annual Security Refresher in January 2007 (AX B). He has numerous letters of praise and recommendation from associates and supervisors in 2007 (AX C). Applicant called four witnesses from work. They all think highly of Applicant and his contribution to the Company and the national defense effort (Tr at 78, 79, 93-98, 100-116, and 122-129). One witness conformed the long hours sometimes worked by Applicant, and others, sometimes “80,120 hours per week” (Tr at 80-82, 98, 99), but apparently was not aware of the number and type of security violations committed by Applicant (Tr at 86, 79, 87).

Another witness has worked with Applicant for about 17 years and views Applicant as being careful about his handling of classified material (Tr at 118). On occasion, Applicant worked 80-90 hours a week (Tr at 119). He sometime helped Applicant in the latter’s outside activities involving aircraft parts (Tr at 123-126).

## POLICIES

In evaluating the relevance of an individual's conduct, the adjudicator should consider the following nine generic factors: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is “clearly consistent with the national interest” for an individual to hold a security clearance. An applicant’s admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

### CONCLUSIONS

Applicant is a 63-year-old "Senior Principle [Principal?] Systems Engineer" with a major defense contractor (GX 1). The Government/s concerns fall under three different but sometimes overlapping Guidelines, K, E, and L.

All of the adverse information in the case file comes from either Applicant himself, or from Company documents. Applicant's detailed explanations come in two forms, the lengthy Hearing Memorandum, with attachments, submitted prior to the hearing, and Applicant's hearing testimony, given in response to direct questioning by his counsel and on cross examination by Department Counsel. I have also considered the closing arguments of both sides.

My analysis indicated three basic questions: (1) what happened?; (2) did what happened either violate the cited NISPOM provisions or otherwise constitute unacceptable conduct?; and (3) did Applicant provide a explanation convincing enough to overcome the adverse impact of the Government's evidence?. As to the allegations of NISPOM violations, I begin with the premise that the allegations are supported by the Government's evidence and are entitled to considerable deference unless and until Applicant shows them to be false or inaccurate.

#### *Guideline K*

1.a. and 1.b. - Base on all of the relevant evidence, I accept the premise that a company security officer was able to open the approved security container closed and locked by Applicant. A the same time, it appears to be the case that even when the dial was locked by clicking and spinning the dial, it sometimes had the propensity to open if "yanked" hard enough.

The two incidents occurred in September 1984 and June 1985, and Applicant's container privileges were suspended for one year, so that he had to have someone with a security clearance access the container for him. However, a 1988 letter from the then head of security states that the company locksmith had confirmed that the lock was "indeed defective." The letter concluded that "recognizing the history of the lock, there may be sufficient grounds to expunge the June 1985 violation [the September 1984 incident is not mentioned] (AX 21 and Brief at page 3). On this basis, I conclude that the Government has not met its initial burden of establishing that the two violations actually occurred.

1.c. - There appears to be no dispute that Applicant did fail to obtain a receipt for a classified document he "loaned" to another company employee in 1986 (GX 10 and Brief at page 3). His explanation is essentially that, when discovered, it was agreed by company security that the document was probably still in the plant in the possession of another employee and would likely turn up in the next security audit (*Id.*). The document was subsequently recovered and returned to Applicant's security safe, but the violation had already occurred.

1.d. and 1.e. It is undisputed that on two occasions, in 1997 and 1998, Applicant "failed to comply with approved AIS weekly audit" and lost his custodianship of the AIS (GX 10 and Brief at 3). This establishes the violation as alleged. The claim that the violation was "irrelevant" since he was not even using the AIS system during this period and that he remained authorized to use classified material is not persuasive. The violation occurred, was viewed seriously enough by his employer to warrant a loss of custodianship.

1.f., 1.g., 1.h., and 1.i. The fact of the four violations in 2001 and 2002 is not disputed (Brief at page 4). The overall excuse/explanation offered is that because of Applicant's "habitual long hours, he has been faced with the responsibility of closing the H-2 area and properly logging out" on many occasions, during some of which "he was rushed to travel or meet with waiting coworkers of customers (*Id.*).

1.j. It is undisputed that the violation occurred as alleged in 2002. The explanation/excuse is that no document or information was shown to have been compromised. This may or may not be true, but it is also irrelevant. The incident was viewed enough to warrant a verbal warning and then a written disciplinary warning (*Id.*).

1.k. Applicant transferred a classified document onto an unclassified server in about April 2003. His explanation is that was transferring a large document that, without his knowledge, had within it one page of classified information. When he caught his error, he notified security and participated in the "removal process" He now follows the correct procedure and goes over the disk line item by line item (Brief at page 4).

1.1. It is undisputed that Applicant left a classified document outside the security container/safe. The explanation/excuse is that the incident occurred in a secure area, so that no one without a security clearance could see it. This argument misses the point that even other individuals with a security clearance but with no need to know are not authorized to see these documents and, in any case, the procedures are intended to protect the document from anyone other than Applicant having access to it. Applicant acknowledges his error and has not repeated it.

In summary, I find that the violations alleged in 1.a. and 1.b. did not occur as alleged, but that the other allegations, 1.c.-1.l, did occur as alleged. I have carefully considered each of Applicant's violations individually and collectively. The purpose of a DOHA evaluation is not to punish an Applicant for his past mistakes, but to use his past conduct to make a risk analysis of likely future behavior. His history of violations is clearly unacceptable. The question is whether he has adequately mitigated his past misconduct. In this regard, I begin with the finding that the violations ended some four years ago. The next question is whether this period of time can be accepted as indicating a fundamental change in outlook, or is simply a hiatus between offenses.

*The Concern:* Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

Disqualifying Conditions: 34.(c) Loading, drafting, editing, storing, transmitting, or otherwise handling classified reports, data, or other information on any unapproved equipment . . . ; 34.(g) any failure to comply with rules for the protection of classified or other sensitive information; 34.(h) negligent or lax security habits that persist despite counseling by management.

Mitigating Conditions: 35.(a) so much time has elapsed since the behavior, or it has happened so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubts on an individual's current reliability, trustworthiness, or good judgment.

There is no question that Applicant is a highly intelligent, dedicated, and hard working employee of the defense contractor. He is well thought of by his employer and coworkers. He stresses that he traditionally worked long hours out of his desire to protect the U.S. defense effort. His goal was praiseworthy, but his failure to protect classified information under his control is troubling. I conclude that his errors were not intentional, but the result of working too hard, for too long, and with too many classified documents.



The real issue is whether he has changed enough for the better since 2003. The record establishes that Applicant has been able to avoid both repeats of old mistakes and making new ones for some four years. By his own testimony, and that of others who know him, in both live and documented testimony, Applicant has demonstrated he has finally come to understand his obligation to protect classified information and has been able to act on that recognition.

*Guideline E (Personal Conduct)*

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

As to 2.(a)(1) and 2.(a)(2), it has not been established that Applicant believed or had reason to believe that his outside activity was a “business” other activity that had to be reported to either DoD or to his employer. As to 2.(a)(3), it has not been established by the evidence that an amended SF 86 had been sent to him, or that he was even aware of such a request. I conclude that the element of deliberate behavior has not been shown. Applicant has been candid in explaining why he did what he did, more than three years have elapsed since the last incident.

Disqualifying Conditions: None that are established by the record; i.e., that he (2) did not deliberately omit, conceal, or falsify any relevant and material facts from any personnel security questionnaire, . . . personal history statement, or similar form used to conduct investigations, . . . determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Mitigating Conditions: 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; 3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

Based on my evaluation of the entire record, I conclude that no violations of this Guideline occurred.

***Whole Person Concept:*** the DoD adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.

In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: 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 voluntariness of participation; 6. The presence or absence of rehabilitation and other pertinent 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;

The Directive's whole person concept requires me to consider his ability to safeguard classified material based on the character traits established by his numerous violations over many years. The fundamental question about his current security eligibility is whether he can be relied upon in the future not to relapse into the lack of attention that caused his old problems.

Based on his own statements, I conclude the security problem occurred because he was working too many hours, on too many projects, and looking at too many classified documents, that he sometimes lost focus on his security responsibilities. As a result, his attention to detail suffered and he becomes inattentive, and sometimes negligent, in his handling of classified documents. As to his answer to Question 6 on his SF 86, he testified that he did not recall reading the question before answering it with a "No," but he does "know that at the time, [he] interpreted that as not applying to [X] Enterprises because [he] was doing it on the kitchen table" (Tr at 186). He didn't seek a clarification from anyone.

Although he didn't mention it on his SF 86, he did reveal his outside practices to the DSS agent during the first interview. He testified that he never worked on anything he thought had a connection with "anything of security interest," but after "(9/11)" he began backing away from working on anything that had a connection to a foreign country (Tr at 188). He doesn't intend to ever do it again. In context, I find his explanations to be both credible and mitigating.

#### *Guideline E (Personal Conduct)*

2.a. The first allegation alleges a material falsification of Applicant's answer to Question 6 on his February 20, 2004 SF 86. It pertains to Applicant's failure to mention his ownership and operation of a business, in which he refurbished vintage aircraft equipment. Counsel for Applicant challenges the Government's contention that reporting the work was not required because it was "an avocation," not "remunerative," and which Applicant pursued "solely for the pleasure it gave him" (Brief at page 7). Applicant first mentions this operation in his sworn statement of March 4, 2004:

For the past 20 years I have operated a sole proprietorship by the name of [X] Enterprises. As such, I do some consulting on, and upgrades or refurbishing of vintage aircraft equipment as well as avionic s technology which is perhaps 30 years old. I do not advertise and all business is generated by word of mouth . . . If I can't locate a part, I can usually fabricate it myself from a plan or drawing . . . I do not personally involve myself in anything classified or sensitive through my personal business. (GX 3 at page 4)

The issue is Applicant's state of mind and intent. By the express language of Question 11, Applicants are asked to cite all employment during the seven-year period cited, to:

List your employment activities, beginning with the present (#1), all working back seven years. You should list all full-time work, part-time work, and periods of unemployment.

Clearly, the Government is interested in all of Applicant's work history during the entire seven-year period. It is specifically stated in the SF 86 that there should not be any gaps. By his own statements, Applicant operated X Enterprises for some 30 years, without apparent problem, during which period in which he received his original clearance and periodic renewals, and underwent periodic security briefings. If Applicant had chosen to report the other employment, the Government would have had the opportunity to evaluate the information and to decide whether or not there was a problem. This is the reason for asking such questions. Based on the entire record of conduct over a 30-year-period, I conclude that Applicant came to believe he did not have to report the activities; i.e., did not act deliberately. Rather, he appears to have acted carelessly or negligently, a situation that ended when it was brought to his attention based on his own sworn statement.

2.b. alleges that Applicant failed to report his outside business activities to his employer, alleged in 3.a and 3.b., below, as required by specific company rules and regulations (GX 5). Counsel for Applicant argues that no conflict existed and that he was therefore not required to report these activities to his employer. This argument has merit. Unlike the SF 86, which require reporting of all employment, regardless of nature, company policy is specifically aimed at activities considered by the company to constitute conflicts of interest. This concern is separate from any security clearance issues.

Section 5.1 of the Company Manual discusses the company's concerns as follows:

5.1.1. [The company] requires its Directors, employees, consultants, and representatives to avoid conflicts of interest or the appearance of such, between their obligations to the company and their personal affairs. No Director, employee, consultant, or consultant engaged by the company should have an interest, position, or relationship with any person, firm, or corporation, with whom the Company does business or competes, if such interest, position,

or relationship would influence, or might be likely to influence the actions of such individual in the performance of his or her duties. In conducting [Company] business, Directors, employees, consultants, and representatives must be free from any actual or potential influences which could arise from personal considerations or relationships.

5.1.2. Conflicts of interest may arise in many different situations involving customers, competitors, suppliers, or current or potential employees, or from the acquisition, disposition, or use of company asset. Since it is not possible to anticipate every situation that might give rise to a Conflict of Interest, good judgment must be exercised to analyze each situation that might compromise these values.

### 5.3. Personal Business Interests.

5.3.1 Although dual employment (including self-employment) does not necessarily constitute a conflict of interest, in all such cases, [the Company] considers itself the primary employer. There is no specific statement that an employee report all outside employment [as does the SF 86], only when a conflict of interest exists or is foreseen [apparently by the employee] . . . [N]o conflict of interest exists . . . in cases where the secondary employment does not involve a competitor, supplier, or customer.

Applicant could probably have avoided the concerns expressed in allegation 2.b., but Company rules do not expressly require Applicant to report the stated business activities in which he has been involved for several decades. Consequently, this allegation is found in favor of Applicant.

2.c. - alleges that Applicant failed to provide an amended security clearance application when advised by Company personnel that an SF 86 transmitted on about February 20, 2004, contained errors. He explained that he was not aware he had been asked to submit an amended SF 86 (Tr at 144-146) and Response to SOR). I have not found anything in the Government's exhibits that supports this allegation. Applicant's SF 86 is dated February 20, 2004 (GX 1). Nothing in this document, nor any other, references any errors or an amended SF 86 being asked for. Consequently, I find in favor of Applicant as to this allegation.

#### *Guideline L (Outside Employment)*

By its language, the Guideline is concerned about "certain types of outside employment or activities" that are of "security concern" because they pose a "conflict of interest with an individual's security responsibility and can create an increased risk of unauthorized disclosure."

Applicants are required to report "(a) any employment or service, whether compensated or volunteer, with:

- (1) the government of a foreign country;
- (2) any foreign national, organization, or other entity;

(3) a representative of any foreign interests; any foreign , domestic, or international organization engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology.”

3.a., 3.b., and 3.c - Applicant’s outside employment has different impacts and relationships on his responsibilities to his employer and to the Department of Defense. Applicant has long possessed a security clearance as an employee of a U.S. defense contractor. At the same time, he has been maintaining a business as a sole proprietor obtaining or making, and providing, aircraft parts supplied directly or indirectly to foreign military services. Applicant acted more out of his interest in aviation than to make money, out of his business. He claims what might be considered a *de minimis* defense.

Mitigating Condition (MC) (b) is applicable since Applicant has terminated his outside business activity, I have considered the long period of such activity against the sporadic and small scale of Applicants operation, often working out of his home, and the fact that most parts were for older and obsolescent aircraft. It is arguable whether the business activity clearly falls within the language and intent of the question being asked. The reasonable thing to do would have been to notify the appropriate security officials and ask for their guidance as to whether any conflict of interest with the Company had occurred, but the record does not suggest that Applicant acted with any intent to deceive or even negligently, when he acted as he did.

To summarize, it is puzzling that this 63-year-old professional has had so many problems involving so many security issues, over so long a period of time, and which were considered to be serious enough by Company officials to result in admonitions and discipline.

Were it not for the last four years without apparent problems, the negative impact of Applicant’s past conduct would lead to a negative conclusion. His negligent acts and errors or judgment constitute a pattern of conduct and that does not inspire confidence in his ability to protect the nation’s secrets. Ultimately, however, I am persuaded by the passage of more than four years without his making any security-related mistakes. I am impressed by the recommendations of those who have known him at work for many years, and I am impressed by his claim that everything changed in 2003 (Tr at 158). He claims he is now “meticulous” in caring for such documents. “ I am almost paranoid about . . . making sure I don’t do anything in violation of the rules” (Tr at 162). The record over the past four years shows that he has in fact taken increased responsibility in protecting classified material without incident (Tr at 157-159).

I have viewed his response to Question 6 on the SF 86 in context, and I am conclude that this highly intelligent man allowed himself to rationalize that what he was doing was appropriate, without really considering the consequences. The testimony of his friends show him to be a man of integrity who had to learn about the attention to detail needed to take proper care of classified information.

## FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

<i>Guideline K (Handling Protected Information)</i>	For the Applicant
Subparagraph 1.a.	For the Applicant
Subparagraph 1.b.	For the Applicant
Subparagraph 1.c.	For the Applicant
Subparagraph 1.d.	For the Applicant
Subparagraph 1.e.	For the Applicant
Subparagraph 1.f.	For the Applicant
Subparagraph 1.g.	For the Applicant
Subparagraph 1.h.	For the Applicant
Subparagraph 1.i.	For the Applicant
Subparagraph 1.j.	For the Applicant
Subparagraph 1.k.	For the Applicant
<i>Guideline E (Personal Conduct)</i>	For the Applicant
Subparagraph 2.a.(1).	For the Applicant
Subparagraph 2.b.	For the Applicant
Subparagraph 2.c.	For the Applicant
<i>Guideline L (Outside Activities)</i>	For the Applicant
Subparagraph 3.a.	For the Applicant
Subparagraph 3.b.	For the Applicant
Subparagraph 3.c.	For the Applicant

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**BARRY M. SAX**  
**ADMINISTRATIVE JUDGE**