

KEYWORD: Financial, Alcohol; Criminal Conduct; Personal Conduct

DIGEST: Applicant failed to mitigate security concerns under the Financial Considerations, Alcohol Consumption, Criminal Conduct, and Personal Conduct Guidelines of the Directive. Clearance is denied.

CASENO: 06-10608.h1

DATE: 04/30/2007

DATE: April 30, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-10608
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_\_Applicant failed to mitigate security concerns under the Financial Considerations, Alcohol

Consumption, Criminal Conduct, and Personal Conduct Guidelines of the Directive. Clearance is denied.

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### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 16, 2006, under the applicable Executive Order<sup>1</sup> and Department of Defense Directive,<sup>2</sup> DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision—security concerns raised under Adjudicative Guidelines F (Financial Considerations), G (Alcohol Consumption), J (Criminal Conduct), and E (Personal Conduct), promulgated December 29, 2005, and applicable in DoD adjudications of SORs issued as of September 1, 2006, and thereafter. With the SOR, DOHA provided Applicant with a copy of the Directive and the applicable Adjudicative Guidelines. On December 7, 2006, Applicant filed a signed response to the SOR. He requested his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on February 9, 2007. The FORM contained documents identified as Items 1 through 7.

On February 14, 2007, Applicant was provided a copy of the FORM, with instructions to submit any additional information and/or objections within 30 days of receipt. He did not submit any information within the 30-day time period. On April 12, 2007, the case was assigned to me for a decision.

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### **FINDINGS OF FACT**

\_\_\_\_\_ Applicant is 37 years old and employed as a material supply clerk by a Defense contractor. He attended junior college from 1987 to 1988, and he served in the U.S. Navy from 1988 to 1992. (Item 4.)

Applicant is the father of three children, ages 20, 9, and 8. He was married in 2000 and divorced in 2003. He married his second wife in 2004. He pays approximately \$525 per month in child support. He lists his total net monthly income as \$2,256 and his total monthly expenses as \$3,265. (Item 5.)

The SOR alleges under Guideline F, Financial Considerations, that Applicant was responsible for twelve past-due debts: six financial delinquencies (SOR ¶¶ 1.a., 1.d., 1.f., 1.h., 1.i., and 1.k.); two past-due medical bills (SOR ¶¶ 1.b., and 1.g.); a judgment on an automobile repossession (SOR ¶

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<sup>1</sup>Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.

<sup>2</sup>Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

1.c.); two wage garnishments (SOR ¶¶ 1.e. and 1.l.); and a returned check (SOR ¶1.j.). (Item 1.) The alleged financial delinquencies total approximately \$17,700 and none had been satisfied as of November 3, 2006. (FORM at 3.) Applicant admitted all twelve Guideline F allegations. (Item 3.) Nothing in the record indicated Applicant's financial difficulties were largely beyond his control. There was no evidence in the record that he had sought or received consumer financial credit counseling or that he had initiated a good-faith effort to repay his creditors or otherwise resolve his debts.

The SOR alleges under Guideline G, Alcohol Consumption, that Applicant attended alcohol-related treatment in November 1993 (SOR ¶ 2.a.); that he was arrested in March 1999, charged with Driving Under the Influence (DUI), convicted, placed on probation for 36 months, and assessed twelve points on his driver's license (SOR ¶ 2.b.); that he was arrested in October 2000, charged with DUI, convicted, fined \$336.90, and assessed eight points on his driver's license (SOR ¶ 2.c.); that in December 2000, he was arrested, charged with DUI, convicted, sentenced to 18 months confinement with 16 months suspended, placed on 16 months probation when released from confinement, ordered to undergo an alcohol evaluation and complete an alcohol rehabilitation program, fined \$575, and assessed eight points on his driver's license (SOR ¶2.d.). The SOR also alleged that Applicant attended alcohol-related treatment in about December 2000 (SOR ¶ 2.e.). Additionally, the SOR alleged that in August 2001, Applicant's driver's license was revoked in an alcohol-related administrative review point system hearing at which Applicant failed to appear, and Applicant's license remains listed as revoked/suspended in State A. (SOR ¶2.f.) Applicant admitted all six Guideline G allegations. (Item 3.) Applicant provided no evidence that his alcohol-related conduct will not recur, that he has established a pattern of abstinence or responsible use, that, as an employee, he is currently participating in a counseling or treatment program, or that he had successfully completed an inpatient or outpatient alcohol rehabilitation program, along with any required aftercare.

In the SOR, DOHA alleged eight allegations of disqualifying conduct under Guideline J, Criminal Conduct. The SOR alleged that Applicant was arrested in February 1987, charged with Disorderly Conduct, a misdemeanor, and the charges were later dismissed (SOR ¶ 3.a.); that he was arrested in 1996, charged with Assault and Battery, convicted of Assault, and fined \$2,500 (SOR ¶ 3.b.); that in December 1996, he was arrested and charged with Assault (SOR ¶3.c.); that in November 2001, Applicant was arrested, charged with Violation of Probation ordered in connection with his arrest in allegation 2.d. above, convicted, and sentenced to 15 days in jail (SOR¶ 3.d.).

DOHA also alleged Applicant was arrested in June 2002, charged with Assault and Battery on a Family Member (a misdemeanor), ordered to attend anger management counseling, and the charges were later dismissed (SOR ¶ 3.e.); that he was arrested in June 2003, charged with Assault Second Degree, and his case was placed on the Stet Docket in about September 2003 (¶ 3.f.); and that in October 2003, he was arrested, charged with Domestic Violence/Assault Second Degree, sentenced to probation, and ordered not to have any contact with the person he had assaulted (SOR¶ 3.g.).

DOHA also alleged Applicant's three convictions for DUI, as alleged under Guideline G in SOR ¶¶ 2.b., 2.c., and 2.d., as criminal conduct under Guideline J (SOR ¶ 3.h.). Applicant admitted all eight Guideline J allegations. (Item 3.) Applicant provided no evidence of successful rehabilitation or that his criminal conduct is unlikely to recur.

On October 27, 2004, Applicant executed and signed a security clearance application (SF-86). (Item 4.) Question 24 on the SF-86 asks an applicant if he or she has ever been charged with or convicted of any offenses related to alcohol or drugs. Applicant answered “yes” to Question 24 and listed the DUI alleged in SOR allegation 2.d. He did not list his DUI convictions listed in SOR allegations 2.b. and 2.c. DOHA alleged, under Guideline E, Personal Conduct, that Applicant falsified material facts on his SF-86 by failing to list the DUIs alleged at SOR 2.b. and 2.c. (SOR ¶ 4.a.) Applicant denied the allegation. (Item 3.)

Question 26 on the SF-86 asks an Applicant about his or her police record or other offenses. It asks if an applicant has been arrested for, charged with, or convicted of offenses not listed in response to Questions 21, 22, 23, 24, or 25. Applicant responded “yes” and listed two arrests, Violation of Probation in November 2001 and Domestic Probation/No Contact With Person in October 2003. These arrests were alleged in SOR allegations 3.d. and 3.g. He did not list the arrests alleged at SOR ¶¶ 3.e and 3.f. DOHA alleged, under Guideline E, that Applicant falsified material facts on his SF-86 by failing to list the arrests alleged at ¶¶ 3.e. and 3.f. (SOR ¶ 4.b.) Applicant denied the allegation. (Item 3.)

Question 39 on the SF-86 asks an applicant whether he or she is currently over 90 days delinquent on any debt. Applicant answered “yes” to Question 39 and listed a credit card debt. He did not list the debts alleged at SOR ¶¶ 1.a. and 1.b., which were 90 days delinquent when he executed and signed his SF-86. (Item 6.) DOHA alleged under Guideline E that Applicant falsified material facts on his SF-86 by failing to list the delinquencies identified at SOR ¶¶ 1.a. and 1.b. (SOR ¶ 4.c.) Applicant denied the allegation. (Item 3.)

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## **POLICIES**

“[N]o 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 occupy a position . . . that will give that person access to such information.” *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens “whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information.” Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 2, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

By Memorandum dated August 30, 2006, the Under Secretary of Defense directed implementation of revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, promulgated December 29, 2005, and effective September 1, 2006, as modified. The revised Adjudicative Guidelines replaced the guidelines published in Enclosure 2 to DoD Directive 5220.6 and Appendix 8 to DoD 5200.2-R, and they apply to all adjudications and other determinations in which a SOR had not been issued by September 1, 2006. Accordingly, since the SOR in this case was issued November 16, 2006, the revised Adjudicative Guidelines apply.

The revised Adjudicative Guidelines set forth personal security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines 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. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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 security clearance." ISCR Case No. 01-20700 at 3.

## CONCLUSIONS

### **Guideline - Financial Considerations**

An Applicant's failure to live within his means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *See* Guideline F, ¶ 18.

In the SOR, DOHA alleged Applicant was responsible for twelve delinquent debts totaling approximately \$17,700, which had not been satisfied as of November 3, 2006. The allegations raised security concerns under two Guideline F disqualifying conditions, 19(a) and 19(c).<sup>3</sup> Applicant admitted responsibility for the financial delinquencies, and he failed to offer credible evidence indicating he had paid or settled any of the debts.

Through Applicant's admissions and the record evidence, the Government established that Applicant had a history of not meeting his financial obligations and was unable or unwilling to satisfy his debts as specified in Guideline F disqualifying conditions 19(a) and 19(c).

Several conditions could mitigate the security concerns raised by Applicant's remaining financial delinquencies. Unresolved financial delinquency might be resolved if it *happened so long*

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<sup>3</sup> AG F 19(a) reads: "inability or unwillingness to satisfy debts." AG F 19(c) reads: "a history of not meeting financial obligations."

*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. (Guideline F, ¶20(a)). Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person's control, (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances. (Guideline F, ¶ 20(b).) Still other mitigating circumstances that might be applicable include evidence the person has received or is receiving counseling for the problem and/or there are clear indications that the problems is being resolved or is under control (Guideline F, ¶ 20(c)) or the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Guideline F, ¶ 20(d)).*

Applicant's acknowledged financial delinquencies occurred recently and are numerous. There is evidence in the record to suggest Applicant's financial over-extension is on-going and likely to continue in the future. Applicant failed to provide evidence of mitigation under the mitigating conditions discussed above.

### **Guideline G - Alcohol Consumption**

Applicant, who is 37 years old, attended alcohol-related treatment in 1993 and 2000. He was arrested for DUI once in 1999 and twice in 2000. He failed to appear at an alcohol-related administrative review point system hearing. In 2002, his driver's license was revoked by State A. In State A, his license remains revoked. The alcohol-related conduct alleged in the SOR and admitted by Applicant raises concerns under Disqualifying Condition (DC) 22(a) and (DC) 22(c).<sup>4</sup> His three alcohol arrests away from work raise concerns under DC 22(a). His admitted habitual consumption of alcohol to excess and sometimes to the point of intoxication from approximately 1993 to 2000 raises concerns under DC 22 (c).

Under Guideline G, there are four conditions that could apply to Applicant's disqualifying conduct. An applicant might mitigate disqualifying conduct under Mitigating Condition (MC) 23(a) of Guideline G if he provided credible evidence to show that *so much time has passed, or the behavior was so infrequent, or it happened 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.* An applicant might also mitigate disqualifying conduct under MC 23(b) by acknowledging *his or her alcoholism or issues of alcohol abuse, provid[ing] evidence of actions taken to overcome this problem, and. . . establish[ing] a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).*

If an applicant *is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress,* he might be able to provide evidence of mitigation under MC 23 (c). Finally, MC 23(d) might apply if *the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in*

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<sup>4</sup>DC 22(a) reads: "alcohol-related incidents away from work, such as driving while under the influence, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent." DC 22(c) reads: "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent."

*meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.*

Applicant's admitted excessive use of alcohol covered a period of approximately seven years. The record reflects three alcohol-related arrests: one in 1999 and two in 2000. Thus, his disqualifying behavior was not infrequent. Applicant failed to provide credible evidence that the conduct was not habitual, unlikely to recur, and did not lead to concerns about his current reliability, trustworthiness, and good judgment. He failed to provide credible evidence of actions taken to overcome his alcohol problem or to demonstrate abstinence (if alcohol dependent) or responsible use (if an alcohol abuser). Accordingly, I conclude that MC 23(a) and MC 23(b) are inapplicable.

Applicant provided no credible evidence he was participating, as an employee, in a counseling or treatment program and making satisfactory progress. He failed to provide evidence that he had successfully completed inpatient or outpatient treatment for alcohol dependence or abuse and had no history of relapse. Additionally, he failed to show participation in a recommended program of aftercare or to provide evidence of a favorable prognosis. Accordingly, I conclude MC 23(c) and MC 23(d) are inapplicable.

### **Guideline J - Criminal Conduct**

The record in this case shows that Applicant was arrested once in 1999 and twice in 2000 for alcohol-related criminal conduct. In addition, his criminal record included an arrest for Disorderly Conduct in 1987; an arrest and conviction for Assault in 1996; a second arrest and charge of Assault in 1996; an arrest, charge, conviction and sentence of 15 days in jail for Violation of Probation in 2001; an arrest and charge of Assault and Battery on a Family Member in 2002 (a misdemeanor), which was dismissed after Applicant attended court-ordered anger management counseling; and two arrests in 2003, which resulted in a charge of Assault Second Degree and a charge of Domestic Violence/Assault Second Degree.

Criminal conduct creates a security concern because it raises doubts about an individual's judgment, reliability, and trustworthiness. Additionally, it raises doubts about a person's ability or willingness to comply with laws, rules, and regulations. Applicant's admitted criminal activity raises security concerns under Disqualifying Conditions (DC) 31(a) and 31(e)<sup>5</sup> of Guideline J.

Two mitigating conditions under Guideline J might apply to the facts of Applicant's case. Applicant's admitted criminal conduct might be mitigated under Mitigating Condition (MC) 32(a) if he provided credible evidence to show that *so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.* MC 32(d) might apply if *there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.* While Applicant's criminal activity is recent, it also suggests a pattern of conduct, since it spans approximately 16 years, from 1987 to 2003.

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<sup>5</sup>DC 31(a) reads: "a single serious crime or multiple lesser offenses." DC 31(e) reads: "violation of parole or probation, or failure to complete a court-mandated rehabilitation program."

There is no evidence in the record to indicate successful rehabilitation. Applicant's criminal conduct raises serious doubts not only about his reliability, trustworthiness, and good judgment but also about his ability to follow laws, rules, and regulations. Applicant failed to provide credible evidence under MC 32(a) and MC 32(d) to mitigate the criminal conduct alleged in the SOR. No other MCs apply.

### **Guideline E - Personal Conduct**

Personal Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.* Guideline E, ¶ 15.

Under Guideline E, a security concern is raised by an individual's *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.* Guideline E, ¶ 16(a).

Applicant completed a SF-86 in October 2004. Applicant's signed and dated SF-86 is entered in the record as Item 4. In his responses to Question 24 on the SF-86, Applicant failed to list his alcohol-related arrests in March 1999 and October 2000. In response to Question 27, Applicant failed to list his arrests for Assault and Battery on a Family Member in June 2002, and his arrest for Assault Second Degree in June 2003. In response to Question 39, Applicant failed to list two debts that were 90 days delinquent. The Government established a prima facie case that Applicant falsified his answers to Questions 24, 27, and 39. The burden of proof thus shifted to Applicant to rebut or mitigate the Government's allegations. Applicant denied he falsified his answers to the questions, but he provided no credible evidence in support of his denials.

One Guideline E mitigating condition (MC) might be applicable to Applicant's conduct. Pursuant to MC 17(a), personal conduct security concerns might be mitigated if *the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.*

Applicant provided no credible evidence to mitigate his failure to list his alcohol-related arrests in March 1999 and October 2000, his arrests for criminal conduct in June 2002 and June 2003, and his debts that were 90 days delinquent. At the time he completed his SF-86, Applicant was a mature adult and a high school graduate. Although he knew, or should have known, the importance of telling the truth to the Government, he had reason to attempt to minimize his knowledge of his debts, his alcohol-related arrests, and his criminal conduct. His denials that his falsifications were deliberate were not credible. He did not make good-faith efforts to correct his omissions, concealment, or falsifications before being confronted with the facts. I conclude that MC 17(a) does not apply to the facts of Applicant's case.

### **Whole Person Analysis**



In addition to evaluating the disqualifying and mitigating conditions under each guideline, an administrative judge must thoroughly consider and review of all available reliable information about the appellant, past and present, favorable and unfavorable, to arrive at a balanced decision. DoD Regulation 5200.2-R, Appendix 8, describes this process of scrutiny and evaluation as “the whole person concept.” The factors to be considered in a whole person analysis include the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual’s age and maturity at the time of the conduct; the voluntariness of participation; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and, the likelihood for continuation or recurrence.

Applicant’s admissions and the record evidence establish that he lacks sufficient income to meet his monthly expenses. The record also establishes that Applicant failed to offer evidence of alcohol rehabilitation and his alcohol-related conduct is likely to recur, a situation that casts doubt on his current reliability, trustworthiness, and good judgment. Applicant’s criminal conduct spans a period of 16 years, and he offered no evidence of rehabilitation, casting doubt on his trustworthiness. Finally, Applicant deliberately misled the Government regarding the degree and seriousness of his financial situation, his alcohol-related arrests, and his criminal conduct. These actions cast serious doubts on his security worthiness.

In ICR Case No. 98-0761 at 3 (Dec. 27, 1999), DOHA’s Appeal Board states that an administrative judge, in deciding an Applicant’s security worthiness, “must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*.” I have considered the record as a whole and have evaluated Applicant’s conduct under the whole person concept of the Directive. I conclude that Applicant has neither rebutted nor mitigated the security concerns raised by the allegations in the SOR, and he has not demonstrated that it is clearly consistent with the national interest to grant him a security clearance.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1.: Guideline F:    **AGAINST APPLICANT**

    Subparagraphs 1.a. through 1.l.:    **Against Applicant**

Paragraph 2.: Guideline G.:   **AGAINST APPLICANT**

    Subparagraphs 2.a. through 2.f.:    **Against Applicant**

Paragraph 3.: Guideline J.:   **AGAINST APPLICANT**

    Subparagraphs 3.a. through 3. h.:   **Against Applicant**

Paragraph 4.: Guideline E.:   **AGAINST APPLICANT**

Subparagraphs 4.a. through 4.c.: Against Applicant

**DECISION**

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

Joan Caton Anthony  
Administrative Judge