



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



In the matter of: )  
)  
) ISCR Case No. 06-21485  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nichole L. Noel, Esquire, Department Counsel  
For Applicant: Glen Cook, Esquire

March 23, 2009

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline G, Alcohol Consumption and Guideline B, Foreign Influence. Applicant’s eligibility for a security clearance is denied.

On January 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, Alcohol Consumption and Guideline B, Foreign Influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on April 4, 2007, and elected to have a hearing. The hearing was set for January 29, 2008. Prior to the hearing, Applicant, through counsel requested that his hearing be converted to an administrative

determination and submitted a written brief in mitigation. Department Counsel did not object and the assigned Administrative Judge agreed to convert the case to an administrative determination. Department Counsel submitted the government's file of relevant material (FORM) on January 27, 2009. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and submitted additional material within the appropriate time limit. The case was reassigned to me on March 12, 2009.

### **Procedural Matters**

Department Counsel requested Administrative Notice be taken of Items I through IX. These Items are Hearing Exhibits. No objections were noted and the request is granted.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is 53 years old and has worked for a federal contractor since 2002. He married in 2001. His wife was born in the People's Republic of China (PRC) and moved with her first husband to the U.S. in 1992. She became a naturalized U.S. citizen in 2003. She has two daughters from her first marriage. One who resides with her ex-husband in the U.S. and the other resides with her and Applicant.

Applicant's father-in-law is a citizen of the PRC and resides with Applicant and his wife in the U.S. Prior to their marriage he resided with Applicant's wife since 1997. Applicant's wife provided a statement that her father is a permanent resident of the U.S. with a green card. Applicant's mother-in-law and brother-in-law are citizens and residents of the PRC. Applicant's wife has telephonic contact with her mother one to three times a month. She sends her approximately \$1,000 to \$1,500 a year as a gift. Her contact with her brother is maybe once a year. No information was provided regarding how Applicant's mother-in-law supports herself or if she receives any type of support from the PRC government. Applicant and his wife do not know how his brother-in-law is employed. Applicant's wife's has not talked to her brother in a couple years and is not sure what he is doing. In her written statement she said, "none of my family has ever worked in a position for [the] PRC or is a member of the Communist Party."<sup>1</sup>

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<sup>1</sup> Item 13. It is noted that Applicant's sworn answer to the SOR is part of the record. Additional information provided is through a brief that is signed by Applicant's attorney and is argument and not evidence. The documents included with the brief are considered evidence. I have received a signed statement from Applicant's wife and an additional signed statement from Applicant dated February 25, 2009, along with other documents. I have only included those facts supported by evidence that was provided to me by either Department Counsel or Applicant. I have considered Department Counsel's brief and Applicant's attorney's brief as persuasive argument, but not evidence. Since there were no objections to documents provided by Department Counsel and offered as evidence, I have considered them. I have also considered those documents offered by Applicant as evidence and not objected to.

No information was provided as to what contact Applicant's father-in-law maintains with his wife and/or son in the PRC. No information was provided as to whether Applicant's father-in-law intends on visiting his family in the PRC. No information was provided as to what contact he maintains with other relatives or friends that are in the PRC.

Applicant traveled to the PRC in 2001 with his then fiancé to meet his future mother-in-law prior to their marriage.

Applicant admitted he consumed alcohol, at times to excess, and to the point of intoxication, from 1971 to at least October 2005.

Applicant was arrested on about January 12, 1986, and charged with Driving Under the Influence of Alcohol (DUI). He was found guilty, fined and placed on three years probation.

Applicant was treated in a 28-day inpatient alcohol treatment program in about 1995.

Applicant was arrested on about August 10, 1996, and charged with DUI. He pleaded guilty to Reckless Driving and was fined \$750, and ordered to attend Alcoholics Anonymous meetings and obtain alcohol counseling.

Applicant had multiple weekend detoxication treatments from 1994 to 1997.

Applicant was arrested on about January 25, 2005, and charged with DUI and improper left turn. Applicant was involved in a traffic accident. He hit another vehicle. A witness helped Applicant out of his car and smelled alcohol. The victim in the car that was struck by Applicant's car was transported to the hospital with head and neck injuries. The victim's son was a passenger and he was also transported to the hospital. It is unknown what his condition was or the final diagnosis of either victim. Applicant's head was bleeding and he was transported to the hospital. His car had two 12-packs of beer, one was full and the other had 3 cans of beer remaining. Applicant denied drinking alcohol and claimed he had consumed cold medication. He refused to take a breathalyzer and a search warrant was obtained. A blood alcohol test was administered and the toxicology results were: Blood Alcohol: 0.32% grams ethanol/100 ml blood.

Applicant pled guilty to DUI and was sentenced to 365 days in jail, 355 suspended, and 20 days home confinement. He was placed on probation for 18 months, fined about \$1,500, and ordered to complete 120 hours of community service. He was required to install an interlock system in his vehicle, complete an inpatient alcohol treatment program and an aftercare program.

Applicant was treated in an inpatient alcohol recovery program from about March 2, 2005, to May 10, 2005, for a condition diagnosed, in part, as Alcohol Dependence

with withdrawal symptoms, by a licensed substance abuse counselor under the supervision of a psychologist.<sup>2</sup>

Clinical records from his treatment in May 2005 reflect he had up to nine medical detoxes in his past. He had been in three motor vehicle accidents. He was drinking prior to all three of the accidents. He did not remember how much he had to drink prior to the last accident when his blood alcohol was .32%. The other accidents involved falling asleep after drinking and one time he hit a stationary object.<sup>3</sup> His clinical report stated that the longest period he had been alcohol free was 15 months in 2000 to 2001. He first used alcohol when he was 16 and used it on and off since that time. In his late 20s he was a heavy drinker. Six months prior to the clinical report in May 2005, he reported he was drinking alcohol every day. He has drunk as much as a case of beer and fifth of whiskey at a time.<sup>4</sup>

Applicant's clinical report reflected a good prognosis while he was in treatment and addressing his substance abuse issues. At that time he was actively participating in all groups, classes, recreational activities, and individual counseling sessions. He was discharged from treatment to the probation services program of the state which was to monitor his after care program and involvement in a community based twelve-step program.<sup>5</sup>

Applicant continued weekly aftercare from February 2006 to August 2006. He had a relapse and drank alcohol a few months after starting the aftercare program after he had some dental work.<sup>6</sup>

A letter from Applicant to his attorney dated January 23, 2008, provided as an enclosure to a brief from the attorney states the following:

I regularly attend 2-3 Alcoholics Anonymous (AA) meetings a week in addition to attending weekly aftercare sessions. I have an ignition interlock system installed in my car that is required by the Department of Motor Vehicle (DMV). I plan to keep the ignition interlock installed in my car even following completing the DMV requirement.<sup>7</sup>

It appears Applicant continued to attend some type of aftercare program that extended through January 2008. However, the specifics of this aftercare program are

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<sup>2</sup> Items 7, 8 and 9.

<sup>3</sup> Item 7.

<sup>4</sup> Items 5, 6, 7, 8, and 9.

<sup>5</sup> Item 9.

<sup>6</sup> Item 11.

<sup>7</sup> Item 13.

uncertain. It is self-described by its executive director as providing “eco-psychological services to people, including traditional rites of passage ceremonies and spiritual retreats.”<sup>8</sup>

Applicant was afforded the opportunity to respond to the FORM to provide updated information about his current alcohol use and recovery. The brief submitted by Applicant’s attorney states the following:

Applicant has acknowledged his alcoholism, addressed issues of alcohol abuse, has provided evidence of actions taken to overcome this problem, and has established a pattern of abstinence or responsible use: Applicant has successfully completed inpatient treatment on May 10, 2005. Applicant has continued in an aftercare program through the current date<sup>9</sup> to ensure maintenance of responsible use.<sup>10</sup>

I do not have evidence that Applicant is currently in an aftercare program. I do not know if Applicant abstains from drinking alcohol or continues to use it. I have no independent evidence provided by Applicant to show he has been attending an aftercare program to date or is participating in AA or if he is abstaining from the use of alcohol. The most recent information provided regarding any aftercare is dated May 31, 2007, with a follow-on letter dated January 23, 2008, more than 14 months ago.

The most recent statement from Applicant is dated February 25, 2009, and it states the following:

I have continued to participate in aftercare since my discharge from residential treatment in 2005. I also continue to participate in AA. My responsible use of alcohol is evidenced by commendations from my employer for my work.<sup>11</sup>

Applicant admits in this statement that he continues to consume alcohol despite being diagnosed as alcohol dependent. I have no information as to how much alcohol Applicant currently consumes. I have no information from Applicant as to how this is consistent with his diagnosis as alcohol dependent or with attending alcohol treatment aftercare, and AA, and how it is consistent with the 12-step program.

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<sup>8</sup> Item 13.

<sup>9</sup> Presumably the date of the brief February 29, 2009.

<sup>10</sup> Item 13.

<sup>11</sup> Applicant’s statement dated February 25, 2009.

## **People's Republic of China<sup>12</sup>**

China has powerful military forces, including strategic nuclear missiles. China is geographically vast, and has a population of over a billion people. It has significant resources, and an economy that in recent years has expanded about 10% per year. China aggressively competes with the United States in many areas. PRC's competitive relationship with the United States exacerbates the risk posed by Applicant's and his wife's connections to family members living with them and living in the PRC.

In China reported human rights problems include suppression of political dissent, arbitrary arrest and detention, forced confessions, torture and mistreatment of prisoners. The PRC also monitors communications devices, such as telephone, facsimile, and internet.

China has an authoritarian, Communist government. China has a poor human rights record, suppresses political dissent, and practices arbitrary arrest and detention, forced confessions, torture, and other prisoner mistreatment.

China actively collects military, economic and proprietary, industrial information about the United States because of the following circumstances: (1) its position as a global power; (2) its military, political, and economic investments in the Pacific Rim and Asia; and (3) its leading role in development of advanced technology that China desires for economic growth. China's active intelligence gathering programs focus on sensitive and protected U.S. technologies. China's espionage activities and industrial theft activities are so extensive they represent a leading threat to U.S. technology.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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<sup>12</sup> HE I through IX; Item 12.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

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

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline G, Alcohol Consumption**

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

I have considered all of the disqualifying conditions under AG ¶ 22 including:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, 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;

(c) 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, and

(e) evaluation of alcohol abuse or alcohol dependent by a licensed clinical social worker who is a staff member of a recognized alcohol treatment facility.

Applicant has been arrested for three alcohol-related incidences; two have resulted in convictions for DUI and one for reckless driving. Two involved traffic accidents, one with injuries to people in a car Applicant struck. Applicant has been through inpatient alcohol treatment in 1995 and was arrested in 1996 for the above mentioned offense that was reduced to reckless driving. He attended AA for a period time and alcohol counseling. He has had multiple detoxification treatments in 1994 through 1997. He was again arrested and convicted of DUI in 2005. He again attended an inpatient alcohol recovery program and was diagnosed as alcohol dependent. He attended an aftercare program. I find disqualifying conditions (a) and (c) apply. I do not have any evidence that the diagnosis of alcohol dependence was made by a licensed clinical social worker who is a staff member of a recognized alcohol treatment facility. I do have evidence Applicant was diagnosed by a licensed substance abuse counselor under the supervision of a psychologist. However, this diagnosis does not comply with the requirements of disqualifying condition (e) and hence does not apply.

I have considered all of the mitigating conditions under AG ¶ 23 including the following:

(a) so much time as passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not case doubt o the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and ha established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the individual 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; and

(d) 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 meetings of Alcoholic 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 has a very long history of alcohol abuse. He has a history of relapse despite intensive inpatient treatment. It appears he successfully completed his last inpatient treatment in 2005. He also attended aftercare. I am concerned about the lack of recent information about Applicant's current use of alcohol. He refers to his modified consumption of alcohol vice his abstinence from alcohol use. Based on his long history of alcohol abuse and likely dependency I find the record conspicuously void of recent independent information about his use of alcohol, recent attendance in an aftercare program, and his attendance at AA. Applicant's "modified consumption" appears inconsistent with his AA attendance. Based on Applicant's long history of alcohol problems I do not have sufficient credible, reliable and substantiated evidence that he is currently in recovery and abstaining from alcohol, or that his problems with alcohol are unlikely to recur. There may be credible evidence that Applicant has maintained a sober lifestyle and is actively participating in a long-term recovery plan, but he has not provided reliable evidence to convince me of such. I also do not have reliable, credible and substantiated evidenced that he has overcome his problem and established a pattern of abstinence. Applicant's attendance at work does not rise to the level to convince me he has resolved his alcohol problems. Therefore, I find mitigating conditions (a) and (b) do not apply.

Applicant did not provide any corroborated current evidence that he is actively participating in a counseling or treatment program. He made a statement and his attorney argued he was currently participating in one, but I did not receive any independent evidence sufficient to mitigate the security concern. Nonspecific information that was provided is over a year old. Due to Applicant's long history of alcohol abuse I find this nominal evidence insufficient. Hence, I find (c) does not apply.

Based on the above analysis I also find mitigating condition (d) does not apply. Although Applicant may have completed inpatient and aftercare requirements, I do not have any current independent evidence or corroboration as to Applicant's present alcohol consumption, or as he refers to it as "modified consumption" and a prognosis by a duly qualified professional as to his prognosis based on that consumption. Based solely on the record before me there are too many gaps regarding Applicant's consumption and recovery to conclude Applicant's alcohol problem is no longer a security concern.

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by

any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and especially considered the following:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
- (d) sharing living quarters with a person or person, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion;

Applicant's wife and father-in-law share living quarters with him. His father-in-law is a citizen of the PRC. His wife, a U.S. citizen, maintains regular contact with her mother who is a citizen of and resides in the PRC. His wife maintains lesser contact with her brother. She also sends her mother gifts. No information was provided as to what contact Applicant's father-in-law maintains with his wife or son in the PRC. No information was provided as to what other contacts his father-in-law maintains in the PRC. I find disqualifying conditions (a) and (c) apply because of Applicant's wife's contact with her relatives in the PRC. I also find (b) applies because of Applicant's contact with his father-in-law, a PRC citizen, who lives with him.

AG ¶ 8 describes conditions that may be mitigating. I have considered all of them and especially considered the following:

(a) the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization and interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that

the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under the Foreign Influence Guideline. However, if a relative lives in a foreign country and Applicant, or in this case, his wife, has frequent non-casual contact with that relative, this factor alone is sufficient to create the potential for foreign influence.

The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence operations against the U.S. The complicated competitive relationship of the PRC with the U.S. places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationship with his family in the PRC, his wife's relationships, and his father-in-laws connections to the PRC does not pose a security risk and he is not in a position to be forced to choose between loyalty to the U.S. and his family members. The PRC has a mixed human rights record, and other political, economic, and military rivalry with the U.S. It is conceivable that the PRC would target any citizen in an attempt to gather valuable information from the U.S.

Based on the limited facts provided, I am unable to adequately analyze the depth and specifics of the relationship that Applicant has with his father-in-law, a PRC citizen who lives with him. I have not been provided with sufficient background information about his father-in-law's future intentions. I have not been provided sufficient in depth information about Applicant's wife's relationship with her mother and her mother and brother's background information. Applicant has the ultimate burden of persuasion and based on the limited information provided I cannot find a conflict of interest does not exist or that a heightened risk does not exist. Perhaps that is the case, but at this juncture Applicant failed to provide the extensive information required to sufficiently analyze the complex foreign family relationships and meet his burden. Therefore, I find that none of the mitigating conditions apply.

### **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(a):

(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) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is 53 years old and has a long history of alcohol abuse and alcohol related incidents. He has been convicted twice of DUI and an alcohol related Reckless Driving charge. He has attended inpatient and outpatient alcohol treatment and been involved in aftercare programs, and AA. Applicant failed to provide current information about his alcohol use and continuing recovery. His reference to modified consumption is a cause of concern. Applicant has family members who are citizens and residents of the PRC. His father-in-law, who lives with him, is a citizen of the PRC. Applicant's wife maintains regular contact with her mother, who is a citizen of and resides in the PRC. Insufficient evidence was presented to properly analyze the potential security concerns regarding Applicant's foreign relatives. Overall the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from alcohol consumption and foreign influence.

### **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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline G: | AGAINST APPLICANT |
| Subparagraph 1.a-1.h:     | Against Applicant |
| Paragraph 2, Guideline B: | AGAINST APPLICANT |
| Subparagraph 2.a-2.d:     | Against Applicant |

## **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge