



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



In the matter of: )  
)  
) ISCR Case No. 13-00566  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Candace Le'i Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

04/28/2014

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on October 5, 2010.<sup>1</sup> The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on June 4, 2013, detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

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<sup>1</sup>Applicant previously completed a security clearance application (SF-86) on February 4, 2002. GE 2.

Applicant received the SOR on June 13, 2013, and he answered it on June 26, 2013. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on February 10, 2014, and I received the case assignment on February 12, 2014. DOHA issued a Notice of Hearing on February 26, 2014, and I convened the hearing as scheduled on March 26, 2014. The Government requested that a letter of rights and obligations dated February 7, 2014 and mailed to Applicant be received as hearing exhibit (HE) 1. Applicant did not object, and HE 1 was received in the record. In its case in chief, the Government offered exhibits (GE) marked as GE 1 through GE 7, which were received and admitted into evidence without objection. Applicant and three witnesses testified. Applicant submitted exhibits (AE) marked as AE A through AE L, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on April 3, 2014. I held the record open until April 11, 2014, for Applicant to submit additional matters. Applicant timely submitted AE M through AE U, which were received and admitted without objection. The record closed on April 11, 2014.

### **Findings of Fact**

In his Answer to the SOR, Applicant denied the factual allegations in the SOR.<sup>2</sup> He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 48 years old, works as a senior software engineer for a DOD contractor. He began his current employment in December 2013. Prior to this, Applicant was the chief information officer for Company A. He was also a shareholder in Company A. Company A's primary business came through a contract with the United States Navy. Beginning in 2010, Company A's income began to decline because of federal budget cuts. In 2013, sequestration and budget cuts resulted in the termination of this contract. Applicant is no longer associated with Company A. Applicant has worked as a software engineer or technician and manager for many years.<sup>3</sup>

Applicant received an associate's degree in the late 1980s and a bachelor of science degree in August 2011. Applicant and his wife married in November 2000, separated in May 2010, and recently reconciled. During his separation, Applicant

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<sup>2</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>3</sup>GE 1; AE I; Tr. 25, 34-35, 72-73.

supported two households. Applicant's sons are ages 22 and 6. His stepdaughters are ages 23 and 22. His wife works as a bookkeeper.<sup>4</sup>

In 2000, Applicant and his wife purchased a home (#1). They obtained a mortgage on this house in the amount of \$333,000 from mortgagor A. In April 2004, they obtained a home equity line of credit for \$127,000 from mortgagor B (SOR ¶ 1.b). They used this money towards the purchase of a larger home (#2) in 2004. They obtained a \$522,240 mortgage from mortgagor C (SOR ¶ 1.a) in 2004. In 2006, they obtained a home equity line of credit on home #2 in the amount of \$278,500 from mortgagor D.<sup>5</sup>

Beginning in 2004, Applicant and his wife rented home #1 and lived in home #2. They paid the mortgages on both homes each month. In 2010, Company A started experiencing cash flow problems, which caused a decline in Applicant's personal income.<sup>6</sup> With the loss of income, Applicant experienced difficulty paying his mortgages. He and his wife decided to request from their mortgage lenders a home loan modification under the federal government's Making Home Affordable program.<sup>7</sup>

### **Home #1 and mortgagors A, B and E**

In February 2010, Applicant retained a real estate company to act as his attorney-in-fact (agent 1) with mortgagors A and B during the home loan modification process on home #1.<sup>8</sup> By April 2010, Applicant had submitted his home loan modification application and documentation to mortgagor A, the company to which he made his primary mortgage payment. On October 28, 2010, Applicant received a letter from mortgagor A denying his request for a home loan modification. Mortgagor A stated that it was not the first lien holder on home #1, which made Applicant ineligible for a home loan modification with it. Mortgagor B had become the first lien holder, but Applicant did not know how this occurred. By letter dated January 15, 2011, mortgagor A advised Applicant that his mortgage would be serviced [emphasis supplied] by mortgagor E beginning on February 1, 2011. Applicant's wife contacted mortgagor E about a home loan modification. Mortgagor E told her that it could do a home loan modification and requested documents. She then asked mortgagor E to provide information showing that it was the first lien holder. It could not. Applicant and his wife declined to proceed with their modification request.<sup>9</sup>

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<sup>4</sup>GE 1; Tr 25-26, 52.

<sup>5</sup>GE 4; Tr. 25-26, 50-52.

<sup>6</sup>For six months in 2013, Applicant had no income.

<sup>7</sup>Tr. 34-36, 53.

<sup>8</sup>Mortgagor B, the home equity lender, appears not to be involved in the first steps of the process.

<sup>9</sup>AE A - AE C; AE Q; Tr. 32, 36-38, 53-60.

In the fall of 2011, Applicant retained the services of an attorney to help him with a new request for a home loan modification of his existing mortgage on home #1. Applicant provided the necessary documents to his attorney in October 2011. The record lacks any evidence describing what occurred with his second application. In July 2012, Applicant received a notice of pendency of action (Lis Pendens) between mortgagor A/E and mortgagor B. This action sought to resolve the issue of the first lien holder. Applicant was named a defendant in this action. His attorney advised him that he could not pay his mortgage during the litigation. The court action resolved in the summer of 2013. Mortgagor A/E has been determined to be the first lien holder, and the appropriate document was recorded at the courthouse in August 2013.<sup>10</sup>

In October 2013, Applicant provided another home loan modification application and supporting documents to his attorney. His attorney submitted the extensive documentation to mortgagors A/E in October 2013. Over the last few months, Mortgagor A/E has requested additional information from Applicant to clarify documentation. Applicant has provided the requested information. The application is currently being reviewed by mortgagor A/E.<sup>11</sup>

Mortgagor B offered to resolve Applicant's delinquency on its \$127,000 home equity loan for approximately 10% of the debt in a letter dated June 13, 2011. Mortgagor B made a second offer to resolve Applicant's indebtedness at approximately 15% of the debt in a letter dated September 17, 2012. Mortgagor B made a third offer to settle Applicant's debt at less than 10% of the debt by letter dated January 28, 2013. Mortgagor B made the last two offers during the Lis Pendens litigation.<sup>12</sup> Applicant declined these offers because he wanted to determine the identity of the first lien holder. During the processing of the home loan modifications, Applicant did not pay either the first or the second loan on home #1. Between May 2010 and early 2014, Applicant sometimes lived in this home. His brother lives in the home and pays him \$1,000 a month in rent. In the past, his oldest son lived in the home and paid \$500 in rent. The rental income did not pay the full monthly mortgage payment.<sup>13</sup>

## **Home #2 and Mortgagors C and D**

Applicant, through his wife, contacted mortgagor C about a home loan modification. On April 14, 2010, they received a letter acknowledging their contact and requesting additional information from them, which they submitted. In March 2011, Applicant's wife made phone calls to mortgagor C about their application. Mortgagor C notified Applicant in a March 2011 letter that it would offer him a Special Forbearance

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<sup>10</sup>AE T; Tr. 38-41, 63, 66-71.

<sup>11</sup>AE Q.

<sup>12</sup>AE S. Given the litigation to determine the first lien holder, the last two settlement offers from mortgagor B may not have been valid.

<sup>13</sup>AE Q; AE S; Tr. 65-66.

Agreement. The letter advised that the agreement was not a waiver of accrued interest or future payments, but a trial period showing that he can make regular payments. At the end of the trial period, his loan would not be current, but would be reviewed for a loan modification. The letter advised that he needed to make three payments of \$904 for three months beginning April 15, 2011. On April 14, 2011, mortgagor C mailed Applicant a letter showing an increase in the amount of his payment to \$3,003 for three months beginning May 1, 2011. Applicant made these payments. When he called mortgagor C about his home loan modification, mortgagor C told him to make another payment, which he did. He made a total of seven additional payments of \$3,003. In February 2012, Applicant's wife called mortgagor C about the status of their loan modification. Mortgagor C told her that it would accept the next payment if they paid the arrearage. They did not have sufficient money to pay the arrearage.

Applicant wrote a series of emails to mortgagor C in February 2012 in an effort to restart the home loan modification process, and he submitted necessary documents. In March 2012, he contacted another real estate group (agent 2) to help with the restart of his home loan modification process. This group was unable to move the process forward with mortgagor C and recommended Applicant and his wife obtain legal counsel. Applicant's wife retained a local advocacy group in August 2012. On behalf of Applicant and his wife, the local advocacy group filed a lawsuit against mortgagor C in December 2012 for unfair lending practices. After more than one year of legal skirmishes, the court dismissed this lawsuit in February 2014. Communications between Applicant and the attorney for the advocacy group indicated that mortgagor C was not willing to reopen Applicant's home loan modification request. However, agent 2 advised Applicant in a letter, dated March 17, 2014, that his home loan modification package had been submitted to mortgagor C's home preservation division for consideration. Agent 2 expected the review process to take months because Applicant and his wife had been making payments on the arrearage.<sup>14</sup>

## **Bankruptcy**

In the summer of 2012, Applicant's wife filed a Chapter 13 bankruptcy petition to prevent foreclosure on home #2. For more than 18 months, she has been paying about \$1,400 a month to the bankruptcy trustee under a debt repayment plan. Part of her payments are being applied to the arrearage on the first mortgage on home #2. The attorney for the advocacy group advised them to continue with the bankruptcy payments. The second mortgage on home #2 was forgiven by mortgagor D in 2012 under a settlement in a lawsuit. Applicant reported this as income on his 2012 tax return.<sup>15</sup>

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<sup>14</sup>GE 3; AE A; AE E - AEH; AE P-1 - AE P-3; AE R; Tr. 36-37, 41-48, 86.

<sup>15</sup>GE 3; GE 7; AE H; AE Q; AE U; Tr. 48, 81-86. Applicant incurred a significant tax liability as a result of the loan forgiveness by mortgagor D. It is unknown if the tax debt has been paid. AE Q.

## **Income**

Applicant submitted an updated personal financial statement and a copy of his March 31, 2014 earnings statement, which represents half of his month's income. He also submitted two earnings statements for his wife. In addition to income from work, Applicant included monthly rental income of \$1,000 from his brother and \$900 monthly income from three of his children. His total gross household income is \$16,183. Based on his earnings statement, Applicant under-calculated the deductions from his income and did not calculate the deductions from his wife's income. These deductions total \$6,093 a month. His monthly expenses total approximately \$6,479, including the bankruptcy payment, leaving a monthly remainder of \$3,611. Some of the expenses appear to be somewhat high. Applicant has sufficient income to pay at least one mortgage if a loan modification is granted.<sup>16</sup>

## **Other Matters**

Applicant advised that if he could not obtain a home loan modification, he would sell both homes through a short sale.<sup>17</sup> His post-hearing documentation reflects that he was involved in litigation with Company A and incurred substantial legal fees for this case as well as legal fees related to the bankruptcy and home loan modification efforts. His 2011 and 2012 tax returns reflect substantial income and business related expenses. He received a tax refund for the 2011 tax year, but owed taxes for the 2012 tax year because mortgagor D forgave his home equity loan on home #2.<sup>18</sup>

Three witnesses testified at the hearing for Applicant. All had been aware of his mortgage problems for sometime. His brother described him as a solid person who does not lie, cheat, or steal and who takes care of his personal business. Two co-workers, past and present, describe him as a man of integrity, who would not be vulnerable to coercion, pressure, duress, or undue influence. Applicant also submitted three letters of recommendation, which included a letter from one of his witnesses. The two additional individuals worked with him at Company A and describe him as a person of integrity with good business ethics and work ethics. All highly recommend him for a security clearance.<sup>19</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

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<sup>16</sup>AE N; AE O.

<sup>17</sup>Under the law in the state in which he lives, he would likely not owe any additional money to the mortgagors after the sale of his property.

<sup>18</sup>AE Q.

<sup>19</sup>AE I - AE L; Tr. 96-123.

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for 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 an 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 F, Financial Considerations**

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant developed financial problems in 2010 when his personal income began to decline because of a loss of income in his business. The two SOR debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems started in 2010 because Company A, his business, started experiencing cash flow problems when the Navy reduced its payments due to budget cuts. At the same time, he and his wife separated, which resulted in two households to support and a reduction in his rental income from home #1. In 2011, he was involved in a lawsuit with Company A, and he incurred substantial legal fees as a result. Applicant's financial problems are the result of factors beyond his control.

When he realized he was having trouble paying his mortgages, Applicant or his wife contacted their mortgage companies about a home loan modification. Both his primary mortgagors invited him to submit an application, and he did. Mortgagor A denied his request because it was not the primary lien holder, although it was the holder of the original lien on the property. Mortgagor A filed a lawsuit against mortgagor B to resolve the issue of the primary lien holder, making it impossible for Applicant to resolve his financial issue with either company. The lawsuit has now been resolved, and Applicant has again filed for a home loan modification, which is being processed. After an initial review of Applicant's home loan modification paperwork, Mortgagor C placed



Applicant in a temporary payment plan. After receiving 10 payments, mortgagor C, without explanation, closed his file and did not proceed with his request for modification. Applicant sought legal assistance and filed a lawsuit against mortgagor C. At the same time, his wife filed for a Chapter 13 bankruptcy to prevent foreclosure. For the last 18 months, she has paid the bankruptcy trustee the required monthly payment, much of which has been applied to the arrears on the mortgage with mortgagor C. Under the unusual circumstances presented in this case, Applicant has acted reasonably in his efforts to resolve his past due mortgages. AG ¶ 20(b) is applicable.

Applicant paid the \$3,003 a month payment requested by mortgagor C for nearly 10 months. Mortgagor C did not follow through with his home loan applications. Under his wife's bankruptcy plan, he has been paying the arrearage on the mortgage held by mortgagor C. These payments reflect a good faith effort to resolve the debt with mortgagor C. AG ¶ 20(d) is partially applicable.

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.<sup>20</sup>

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<sup>20</sup>In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. Applicant earned a good income working for Company A. His income easily covered his monthly expenses. In 2010, Company A developed cash flow problems, which caused financial difficulties for Applicant, despite his overall good income. At the same time, he and his wife separated, which increased his financial pressure as he was supporting two households, while losing some of the rental income from home #1. This fluctuation in income impacted Applicant's ability to readily pay his bills and his mortgages. He sought help from his mortgage lenders. Lower monthly mortgage payments would make it easier to continue his payments given the continued uncertainty of a steady flow of funds, while paying his other bills. Instead of receiving the assistance he had hoped to get, he became caught in the slow moving and overwhelmed home loan modification process which resulted in poor communication between the mortgagor and him. In addition, through no fault of his, he became embroiled in legal battles.

For four years, Applicant has sought to modify his mortgages. He has done all that the mortgage companies asked him to do. Yet, mortgagor C required him to make payments long beyond its stated time frame, then declined to process his home loan modification request. Mortgagor A denied his request in 2010 because of a lien problem created by factors beyond his control. Once he became aware of a problem regarding the first lien holder on home #2, Applicant showed good judgment when he declined to move forward with modification until he was certain of the identify of the first lien holder. Before and during the legal battle between mortgagor A/E and mortgagor B, mortgagor B tried to resolve its debt with Applicant. Applicant showed good judgment when he declined these offers because long-term legal problems could have arisen from any settlement reached before the first lien holder on home #1 was identified by the court. The legal battles are finished, and he is again seeking modification of his mortgages. Throughout the last four years, Applicant took many steps to resolve his mortgage issue and sought help from several sources when necessary. His wife's bankruptcy allowed him to pay towards the arrearage on home #2 while he continued to work for a resolution of the problems he encountered during the home loan modification process and a fair completion of the home loan modification process. His current income is

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payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has "... established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

much lower than his previous income. However, he has sufficient income to pay his usual living expenses and at least one mortgage, if it is modified. His employer thinks highly of his work and long-term employment looks promising.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances under Guideline F.

### **Formal Findings**

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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MARY E. HENRY  
Administrative Judge