DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 06-24213
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro Se*

August 29, 2008

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Decision

_____

HARVEY, Mark W., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guidelines E (Personal Conduct) and J (Criminal Conduct). He deliberately failed to disclose derogatory information on his 2005 security clearance application. Clearance is denied.

Statement of the Case

On March 31, 2005, Applicant submitted a Security Clearance Application (SF 86).[1] On July 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him,[2] pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry,* dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2,

[1]Government Exhibit (GE) 1. There is an allegation of falsification of the 2005 SF 86.

[2]Ex I (Statement of Reasons (SOR), dated Mar. 31, 2005). Exhibit I is the source for the facts in the remainder of this paragraph unless stated otherwise.

1992, as amended, modified and revised.[3] The SOR alleges security concerns under Guidelines J (Criminal Conduct) and E (Personal Conduct). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations, and elected to have his case decided at a hearing. On November 7, 2007, another judge held a hearing. However, that judge left federal service prior to issuing his decision. On January 24, 2008, the case was assigned to me. Department Counsel requested a hearing and the second hearing was held on January 29, 2008. The transcript was completed on February 6, 2008.

On June 10, 2008, the Appeal Board remanded Applicant's case for a rehearing. ISCR Case No. 06-24213 (App. Bd. June 10, 2008). The rationale for the Appeal Board's remand is discussed beginning at page 3, *infra*.

On July 31, 2008, Applicant's third hearing was held in Arlington, Virginia. On August 8, 2008, I received the transcript of Applicant's third hearing (Tr.). I approved a delay until August 15, 2008, for Applicant to submit additional documentation (Tr. 25-26, 88, 102). I subsequently approved additional delays until August 27, 2008, for Applicant to file additional matters (Tr. 103; AE C1-C7, C9, C11-C12, F1-F4).

Procedural Issues

Applicant objected to holding the second hearing and asked that the decision be based solely on the previous hearing. Department Counsel cited the importance of assessing credibility and requested a hearing (R_2. 77). I granted Department Counsel's motion for a hearing.

Applicant objected to the hearing because he did not want to miss training. In an e-mail,[4] I offered to contact the person conducting Applicant's training. I wanted to explain why the hearing was necessary and to seek his excusal from training. Applicant telephoned me and requested that the hearing proceed on January 29, 2008. I set the second hearing for 7:30 a.m. on January 29, 2008, to accommodate Applicant's desire

[3]On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

[4] I sustained Applicant's objection to admission of e-mails discussing setting the hearing date (R. 9). However, I explained to Applicant that those e-mails are available should the Appeal Board wish to have them attached to the record (R_2. 9).

to avoid missing training (R_2. 22).[5] When the hearing began, Applicant cited his desire to attend training that day, and objected to the hearing being held that day (R_2. 8-14). At the start of the hearing, he also indicated he did not believe he was prepared for the hearing (R_2. 10). I offered to delay the hearing until the afternoon, however, Applicant said he wanted to hold the hearing that day (R_2. 8-15). Department Counsel explained that Applicant had not received the 15-day notice to which he was entitled, and I offered to suspend the hearing at any time, if Applicant needed time to review documents or the transcript (R_2. 13-14). During his opening statement, Applicant expressed his appreciation for the early start on the proceeding, and never expressed a clear objection to going forward with the hearing without delaying it (R_2. 22). Towards the end of the second hearing Applicant and I engaged in the following colloquy:

> Applicant: Yes. And I wasn't trying to get out of the hearing at all, but the training session was very important to me and I didn't want to keep dragging it out. You know, so I decided well you know what, if I can just go today and just get it over with I don't want to keep having to delay you.
>
> AJ: I was a little surprised when you said, "No, let's have it tomorrow."
>
> Applicant: Well, you know, I don't like to go a whole lot of back and forth a lot of times. I like to get things done. . . . And that's what I'm about, just getting things done. And I did, it did. I might have taken a little time thinking about what I want to do, but I did want to have the opportunity to come out here and meet you and you to see me, face to face and get to see who I am as a person, as an individual. . . .

(R_2. 74-75).

Appeal Board Remand

The Appeal Board accurately described the processing of Applicant's case. ISCR Case No. 06-24213 at 2 (App. Bd. June 10, 2008). The Appeal Board made two additional observations particularly worthy of note. First, it indicated:

> The Directive requires that an applicant be given 15 days notice of a hearing in order to properly prepare for it. Directive ¶ E3.1.8.[6] The Board has acknowledged that [A]pplicant's can waive that notice under appropriate circumstances. Those statements generally require a discussion of the notice provision at the hearing with a clear statement by

[5] The citations to the record for the first hearing do not contain any subscript numbers. The citations to the second hearing have a subscript "2," for example: R_2. 5 refers to page 5 of the second hearing.

[6] Directive ¶ E3.1.8 provides, "The applicant shall have a reasonable amount of time to prepare his or her case. The applicant shall be notified at least 15 days in advance of the time and place of the hearing, which generally shall be held at a location in the United States within a metropolitan area near the applicant's place of employment or residence."

> Applicant that he is making a knowing and intelligent waiver [of] the 15-day notice requirement. *See, e.g.*, ISCR Case No. 05-12037 at 2-3 (App. Bd. May 10, 2007).

The Appeal Board recognized that Applicant already had a hearing on November 7, 2007. *Id*. at n. 1. The Appeal Board did not explain why Applicant still needed 15 days to "properly prepare" for his second hearing. Moreover, the Appeal Board did not describe how Applicant was prejudiced by lack of sufficient notice. Finally, neither of the two cases the Appeal Board cited to support the remand involved an Applicant who was receiving their second hearing. In a case cited to support the remand decision, ISCR Case No. 05-12037 (App. Bd. May 10, 2007), the Appeal Board quoted the Administrative Judge's colloquy with that Applicant, and then stated:

> Although *pro se* applicants cannot be expected to act like a lawyer, they are expected to take timely, reasonable steps to protect their rights under the Directive. If they fail to take timely, reasonable steps to protect their rights, that failure to act does not constitute a denial of their rights. Because Applicant did not object to proceeding or otherwise request a continuance of her case, she was not denied due process under the Directive or Executive Order.

Id. at 3 (internal citations omitted). In the other case the Appeal Board cited, the Appeal Board's decision does not indicate whether that Applicant objected on appeal to lack of notice. ISCR Case No. 04-12732 at 1 (App. Bd. Nov. 2, 2006). The Appeal Board notes:

> The notice of hearing was issued on June 14, 2005 and the hearing was held eight days later on June 22, 2005. Therefore, it appears the Applicant did not receive the 15 days advanced notification mandated by Directive ¶ E3.1.8. An applicant may waive the 15 day notice requirement. However, given the absence of a discussion on the record between the Administrative Judge and the parties on this issue, the Board cannot determine with certainty that he did.

Id. at 8. I agree with the Appeal Board that it is prudent to obtain a waiver on the record when the 15-day notice requirement is not met. However, I respectfully suggest that asking an Applicant whether they are prepared to proceed, or offering a reasonable delay upon request is adequate to protect an Applicant's right to due process. Of course when an Applicant specifically asks for 15 days of notice, that request should be honored. An Applicant seeking a delay should be required to clearly object to proceeding or request a continuance on the record. Absent a clear and unambiguous objection, waiver should be applied and a case should go forward to hearing. An Applicant can submit additional evidence after the hearing, if he or she chooses to do so.

Other Procedural Issues

In regard to Department Counsel's submitted exhibits, Applicant objected to consideration of charges and events from 1990 and 1994 because they are not relevant because of remoteness (R. 26; Tr. 17). Additionally, Applicant was a juvenile in 1990 when he was arrested and charged with criminal mischief in the 4th degree (Tr. 17). Although these offenses have less relevance because they are not recent, they cannot be considered piecemeal or in isolation. GE 4 is relevant to establishing SOR ¶ 1.a (Tr. 17-18). All criminal offenses must be considered under the whole person concept and especially in the context of whether Applicant truthfully disclosed adverse information on his SF 86. Applicant's objection to GE 4 is overruled. *See also* Judge's ruling from first hearing at R. 27-28.

Applicant objected to consideration of his arrest record because the charges were not relevant due to their dismissal, and did not constitute convictions (Tr. 14-16; GE 5). Applicant's objection to consideration of GE 5 was overruled because the arrest record is relevant to SOR ¶¶ 1.b, 1.c, and 2.a (Tr. 16-17). Applicant did not have any additional objections, and I admitted GEs 1-11 into evidence (Tr. 18). Department Counsel did not object to my consideration of Applicant's exhibits (AE) A and B, and I admitted them into evidence (Tr. 20). Initially, Applicant requested and I agreed to consider the transcript from the second hearing, but not from the first hearing (Tr. 28-31; 44-45). Applicant subsequently withdrew his objection to consideration of the first transcript, and I admitted it (Tr. 90-91).

Department Counsel objected to consideration of web pages that provided information about New York laws pertaining to driving under the influence of alcohol (DUI) or driving while intoxicated by alcohol (DWI) because they were not official sources of New York law (Ex. F2). I overruled the objection and admitted Ex. D and E. I also admitted the statute Applicant allegedly violated (Ex. G).

Department Counsel objected (Ex. F2) to consideration of three letters or statements from Applicant's sister (Ex. C14), a college instructor (Ex. C10), and a college assistant professor (Ex. C8). The basis of Department Counsel's objection was the failure to serve the government with the documents before or during the hearing or after the hearing before my receipt of the documents (Ex. F2). Department Counsel did not request to reopen the hearing to cross-examine Applicant concerning the exhibits. Department Counsel did not request a delay to question the persons providing the documents or to gather evidence to dispute the opinions of his sister and the college instructors. The exhibits are admitted because they do not contradict the SOR allegations, and relate purely to Applicant's good character. Their admission does not prejudice the government and tends to ensure Applicant has received a full and fair hearing.

Findings of Fact

As to the SOR's factual allegations, Applicant made a few admissions in his responses to interrogatories and at his hearings. His admissions are incorporated herein as findings of fact. At Applicant's hearing, he reviewed the Findings of Fact in my decision of February 21, 2008, and described several corrections (Tr. 57-60, 75-88, GE 12). He also urged approval of a Secret clearance or provisional clearance, as opposed to a Top Secret clearance because it would be sufficient to perform his job (Tr. 23-24). The specific corrections to the record are listed below. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 34-year-old senior communications systems engineer (R. 31, 35, Tr. 5). He is single, and has a seven year old son (R. 32). His son lives in a different state with his mother (R. 32). Applicant and the mother of his son have joint custody, however, his son's mother is the primary custodian (R. 32-33). In 1997, he received a bachelor of arts degree in communications (R. 35, 56, Tr. 5). He does not have any military service (R. 35). Applicant does not currently hold a security clearance because his clearance was suspended as part of this process (Tr. 5).

On December 26, 1990, Applicant was arrested and charged with Criminal Mischief, 4th Degree (R. 55). There was an altercation between several men (R. 36-38). Some white men were yelling racial slurs at Applicant and his friends (R. 38, 57, 59). Applicant avoided being seriously injured when someone swung a pipe at him and missed (R. 37, 58). Applicant threw a log through the window of the residence where the white men lived (R. 37, 38, 58, 61). Applicant said he took responsibility for his actions, but could not remember whether he pleaded guilty (R. 68-70). At his third hearing, he indicated he did in fact remember pleading guilty (Tr. 77). He did not have a contested trial on any of his convictions (Tr. 78). He paid restitution for the damaged window, paid a fine and completed some community service (R. 37-38, 65, 70). SOR ¶ 1.a. *See also* R_2. 27-31, Tr. 52-54.

On July 10, 1993, Applicant was arrested and charged with (1) Disorderly Conduct/Intoxicated and Disruptive Behavior and (2) Simple Assault on a Police Officer/Government Official (R. 70-71). He could not remember whether he went to the police station and could not remember whether he was intoxicated (R. 75). At his third hearing, he recalled that it was "more like a ticket or a fine" (Tr. 80). He did not remember being photographed by the police or providing finger prints (Tr. 80-81). Count (1) was dismissed and he was found Not Guilty of Count (2) because the officer did not show up for court (R. 39, 71, 76). Applicant said he could not remember anything about the events leading to the arrest (R. 73). At his second hearing, he disclosed the arrest was made to make an example of him and was without good cause. He did not assault a government official (R_2. 31). He did remember his hearing in court and the dismissal of the charge (R. 76-77, 79). SOR ¶ 1.b. *See also* R_2. 31-37.

On March 10, 1994, Applicant was arrested and charged with (1) manufacturing marijuana; (2) marijuana possession with intent to sell or distribute; and (3) maintaining

a vehicle or dwelling place containing a controlled substance (R. 79-80; GE 6 at 2). Applicant was waiting for a package from his parents (R. 82). A package arrived, but it may have been for Applicant's roommate (R. 83). It was definitely not Applicant's package (R. 83). There was marijuana in the package, and Applicant was unpleasantly surprised (R. 85). The apartment was in Applicant's name, and the police arrested Applicant (R. 84-85). He said he was a victim of circumstances and was worried "because at that time, and even the government stated that they were falsifying fictitiously after certain individuals. You know, young black males, at the time, and basically it was a situation where I was, had bad associations" (R. 90-91). The police report indicated 1000 grams of marijuana was seized from a U.S. mail package after a K-9 alert (GE 11). Applicant denied that it was his marijuana (Tr. 32-34; R_2. 43). He pleaded guilty and was found guilty of counts (2) and (3), both felonies (R. 39-40, 88-90; Tr. 33; GE 6 at 2). The court sentenced him to four years in jail (three years suspended), to pay a fine and court costs totaling about $450, to complete 50 hours of community service, to be evaluated for substance abuse, and to serve five years of probation (R. 40, 95). He said he did not serve any time in jail (R. 41, 91-92). He successfully completed probation and his community service requirement (R. 40, 96). His drug tests did not have any adverse results (R. 94-95). He said he accepted responsibility for the offenses by pleading guilty (Tr. 36-38, 63). Eventually, he said he committed the offense (Tr. 41). However, he said his mistake was his choice of friends, and he did not know that drugs were in the package the police seized (Tr. 63). SOR ¶ 1.c. *See also* R_2. 37-44, Tr. 60-63.

On June 5, 1994, Applicant was arrested and charged with (1) criminal possession of a weapon or firearm; (2) not using a seatbelt; (3) no automobile insurance; (4) failure to affix registration; and (5) driving without lights (R. 110-112). He was alone, as he drove his sister's vehicle (R. 119). Applicant had just dropped off some friends (R_2. 48-49). The police stopped the car Applicant was driving and found a firearm in the car (R. 111). He believed the firearm was found under the backseat (R_2. 48). It was not his firearm (R. 119). He was not aware the firearm was in the car when he was pulled over by the police (R_2. 45-46). He did not remember the other details of the incident (R. 112-118). He was held in a cell overnight (R. 123). He pleaded guilty and the court found him guilty of count (1), and sentenced him to three weeks of house arrest (via ankle bracelet), to pay a $90 fine, and to complete 10 days of community service (R. 41, 125). At the third hearing, he said he did not remember who owned the firearm; however, he took full responsibility for this charge (Tr. 40). Ultimately, he said he committed the offense (Tr. 41). SOR ¶ 1.d. *See also* R_2. 44-49, Tr. 38.

On January 26, 1999, Applicant was arrested and charged with possession of marijuana of an amount greater than one half ounce and less than one and one half ounces (R. 127). The charge was dismissed. Applicant said the police found the marijuana at issue on the side of the road in front of his residence (R. 42, 128-133). At the second hearing, he indicated he was sure the marijuana was not found on his person, but was unsure about precisely where the marijuana was found (R_2. 51-52). At his third hearing, he noted that he did not believe that dismissals counted in the security clearance process (Tr. 82). SOR ¶ 1.e. *See also* R_2. 49-53.

On August 25, 2002, Applicant was arrested and charged with (1) operating a motor vehicle while intoxicated and (2) leaving the scene of an accident (R. 42; Ex. 2 at 4-5; Ex. 6 at 1; Ex. 8; Ex. G at 1). Driving while intoxicated violates New York (NY) CLS Vehicle and Traffic Code (VTC) § 1192.3 (Ex. G at 1). He hit a parked car, and his own car was seriously damage (R. 134; Ex. 8). He could not remember leaving the scene of the accident (R. 135). The arrest report indicates he was stopped by the police, who noted serious damage to his vehicle (GE 8). The police officer noted the smell of alcohol on his breath, and administered a field sobriety test, which he failed. He was then arrested. Applicant said he remained at the scene of the accident (R_2. 57), and he attributed his failure to pass the field sobriety test to the effects of an allergy medicine he was taking (R_2. 54-55, Tr. 42). He denied that he was drinking alcohol at the time of the accident (Ex. 2 at 4). At his third hearing, he indicated he did not leave the scene of the accident (Tr. 83). He merely pulled over, and it was not miles from the scene of the accident (Tr. 83). He also said he pleaded guilty to driving under the influence of a prescription medication as opposed to driving under the influence of alcohol (Tr. 45-46). He agreed the police attempted to give him a breathalyzer test, but did not explain why they were unable to complete the test (R_2. 58).[7] The court found him guilty and sentenced him to pay a $300 fine with a $50 surcharge (R. 138-139; Ex. 2 at 4-5). His driver's license was suspended for 90 days. The record does indicate whether he was found guilty of driving while impaired by consumption of prescription drugs (NY CLS VTC § 1192.4), of driving while ability impaired by the consumption of alcohol (NY CLS VTC § 1192.1), of driving while intoxicated (NY CLS VTC § 1192.3), or of driving while impaired by the combination of drugs and alcohol (NY CLS VTC § 1192.4-1 (Ex. G at 1). After review of all the evidence, I conclude his driving was impaired by a combination of prescription drugs and alcohol, and intoxication is not established. SOR ¶ 1.f. *See also* R_2. 53-59.

Applicant had full, exclusive custody of his child (Tr. 66). The child's mother filed a custody lawsuit, but she lied to the court about being a state resident (Tr. 66). She denied Applicant his right to visitation (Tr. 66). In August and September 2004, a court issued two restraining orders against Applicant at the request of the child's mother (R. 140). The orders were dismissed within 30 days of issuance. SOR ¶¶ 1.g and 1.h. *See also* Tr. 64-70, 83-84.

Failure to Disclose Information for SF 86 and to Department of Defense Investigator

Applicant's SF 86, executed on March 31, 2005, asked three questions that are relevant to the issue of whether Applicant falsified his SF 86:

[7] After Applicant failed several sobriety tests at the location where his car was stopped, a police officer stated in the police report, "I concluded [Applicant] was operating his vehicle under a[n] intoxicated condition and that the effects of alcohol greatly impaired his ability to drive a vehicle. I then placed the accused under arrest for VTC 1192.3, DWI." (Ex. 8 at 2). *See also* Exhibit G1 (VTC 1192.3).

> **Section 24: Your Police Record – Alcohol/Drug Offenses** Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.
>
> **Section 35: Your Financial Record - Repossessions** In the last 7 years, have you had any property repossessed for any reason?
>
> **Section 40: Public Record Civil Court Actions** In the last 7 years, have you been a party to any public record civil court actions not listed elsewhere on this form?

Applicant's response to Section 24 of his SF 86 was "YES." He listed his DUI arrest in August 2002, and he explained he was on medication when he was arrested. SOR ¶ 2.a alleges he did not disclose his 1999 marijuana possession charge. In response to interrogatories he said, "I did not know dismissals counted. [I d]id not remember. I was under the understanding that it was a booking (detainment) not an arrest. I was never given my rights." (GE 3 at 2). *See also* Tr. 82 (reiterating that he did not believe charged offenses or arrests subsequently resulting in dismissals needed to be disclosed on his security clearance application).

At his hearing, he said he was not sure of the difference between being charged and a conviction (R. 43-44, 143-144). He did not understand that he had to disclose information that did not result in a conviction (R. 143). He also said he disclosed the March 10, 1994, marijuana possession offense and indicated he received a fine and probation in response to Section 21 of his SF 86 (R. 143). At his second hearing, he indicated he did not know why he did not disclose the 1999 marijuana possession charge (R_2. 62).

Applicant's response to Section 35 of his SF 86 was "NO." SOR ¶ 2.b alleged that his automobile was voluntarily repossessed in 2002 because he did not make his car payments. Applicant said his car was damaged in an accident, and he believed his insurance company totaled the car (R. 17-20, 46, 144-145). In his response to interrogatories, Applicant said he could not remember whether the car was repossessed (R. 145). His DoD interview states he told the investigator his car was repossessed in the summer of 2002 because Applicant was unable to make the payments (R. 145).[8] Applicant explained the DoD interview had some details that were incorrect (R. 147). The judge from the first hearing asked Applicant to find out the status of the debt (R. 46-47, 55, 156). After the hearing, Applicant provided a letter from his insurance company, dated November 25, 2002, indicating his car was in an accident (Ex. B5). The accident

[8] A credit report indicates Applicant owed $6,423 on the car (GE 9 and 10).

resulted in a total loss. His insurance company made "Auto acceptance" payments of $500 on September 20, 2002, and $766 on November 19, 2002 (Ex. B5). His insurance company arranged for their salvage yard to pick up Applicant's vehicle (Ex. B5). At his third hearing, Applicant said the car was picked up by the auto shop, and totaled out and he did not consider the car to be repossessed (Tr. 74-75, 84-85). *See also* R_2. 62-64.

Applicant's response to Section 40 of his SF 86 was "YES." He disclosed his 2003 family court litigation over custody of his son. However, he did not disclose the August and September 2004, restraining orders against Applicant (R. 145).[9] He said he did not disclose them because they were dismissed and he viewed them as part of the custody litigation that he disclosed previously on his SF 86 (R. 149). His third reason for not listing the restraining orders was because they were "almost like criminal" because it could "turn criminal" and it's a "grey area" (R. 149-150). At his second hearing he emphasized that the restraining orders were part of the custody litigation, which lasted from 2003 to 2005, and he did disclose the custody litigation (R_2. 64-66). At his third hearing, he restated that he disclosed the custody battle (Tr. 85-87). Moreover the restraining orders were dismissed (Tr. 86). SOR ¶ 2.c. *See also* Tr. 47-51.

SOR ¶ 2.d alleges that on September 12, 2005, Applicant did not disclose information in two areas to an Office of Personnel Management (OPM) Investigator: (1) His 1999 arrest and charge of marijuana possession of an amount greater than one half ounce and less than one and one half ounces; and (2) In August and September 2004, a court issued two restraining orders against Applicant. Applicant explained he did not realize he had to report a dismissed charge (R. 47). He said the OPM Investigator did not ask about the restraining orders (R. 48). The OPM Investigator summarized the interview (GE 2), but did not make a statement at Applicant's hearing. The interview summary does not establish Applicant was asked to provide the omitted information. *See also* R_2. 67-70; Tr. 87.

Applicant coached youth basketball in 1998 and 1999 (R. 150). He assisted with basketball camps, and boys club (R. 150). He is active in his church (R. 150). He visits his son and pays his child support (R. 153-154). He takes responsibility for his mistakes, and has earned the trust of his employer and the Department of Defense (R. 152). A project manager described his work as excellent and lauded his professionalism (Ex. B1). Two high-level company officials commended Applicant's tireless efforts to accomplish his mission as well as his excellent or terrific results (Ex. B2 and B3). A fourth company official commended Applicant's diligence, persistence and outstanding problem solving abilities (Ex. B4). Applicant works hard, helps others, pays his taxes, and is a good citizen (R. 152-153). He is a responsible employee and considers himself to be "All-American" (R. 156-157).

Two of Applicant's former instructors in college provided statements lauding his character (Ex. C8). One described him as "ambitious, positive, helpful, analytical,

[9] In the restraining orders Applicant's spouse accused Applicant of multiple criminal offenses. There was no evidence to substantiate her allegations of criminal conduct.

skilled, creative, respectful, committed and passionate" (Ex. C8). Another emphasized his integrity, initiative and positive can-do attitude towards his assignments (Ex. C10). Applicant is a dependable, hardworking and enthusiastic (Ex. C8).

Applicant's sister describes him[10] as a dedicated, conscientious and loyal worker. He is highly intelligent, and exceptionally hard working. He volunteers to assist his community, including the Boy Scouts, YWCA and sports. He makes friends easily, has strong family values, and a wonderful sense of humor.

Applicant's parents aver that that Applicant is a trustworthy, responsible, well-liked, hard-working, dedicated and driven employee. He loves his family and endeavors to help his community. He has been employed since the age of 12. Because of his exemplary dedication and goal-oriented determination, he has achieved significant educational and occupational success. He will be a valuable asset to any organization.

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.

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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence," demonstrating, in accordance with the Directive, that it is not clearly consistent with the

[10] Ex. C13, Applicant's sister's statement, is the source for the facts and opinions in this paragraph. Ex. C16, Applicant's parent's statement, is the source for the facts and opinions in the next paragraph.

national interest to grant or continue an applicant's access to classified information.[11] Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).[12]

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations."

[11] *See* Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth*., 36 F.3d 375, 380 (4th Cir. 1994).

[12] "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying, ¶ 31(a), "a single serious crime or multiple lesser offenses," and ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

Applicant admitted in 1990 he threw a log through a window. The criminal conduct in SOR ¶ 1.a is established.

Applicant denied the 1993 offense of disorder or intoxicated conduct and assault on a police officer or government official. The arrest did not result in a conviction. The evidence did not establish the 1993 offense. SOR ¶ 1.b is not established.

Applicant admitted and the records reflect in 1994 he was charged with marijuana possession with intent to sell or distribute, and maintaining a vehicle or dwelling place containing a controlled substance. Both offenses are felonies. The marijuana possession involved approximately 1000 grams of marijuana. He pleaded guilty and was found guilty of both counts. Although he denied knowledge that the marijuana was located in a package in his residence, collateral estoppel applies. SOR ¶ 1.c is established with respect to these two offenses.

In ISCR Case No. 04-05712 at 7 (App. Bd. Oct. 31, 2006), the Appeal Board established a three-part test for determining when a guilty plea should not trigger collateral estoppel:

> First, the party against whom the earlier decision is asserted must have been afforded a "full and fair opportunity" to litigate that issue in the earlier case. *Haring v. Prosise*, 462 U.S. at 313; *Allen v. McCurry*, 449 U.S. 90, 95 (1980). Second, the issues presented for collateral estoppel must be the same as those resolved against the opposing party in the first trial. *Montana v. United States*, 440 U.S. 147, 155 (1979). Collateral estoppel extends only to questions "distinctly put in issue and directly determined" in the criminal prosecution. *Frank v. Mangum*, 237 U.S. 309, 334 (1915). Third, the application of collateral estoppel in the second hearing must not result in unfairness. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 330 (1979)(detailing circumstances where allowing the use of collateral estoppel would result in unfairness); *Montana v. United States*, 440 U.S. at 155 (court should consider whether other special circumstances warrant an exception to the normal rules of preclusion). Federal courts decline to apply collateral estoppel where the circumstances indicate a lack of incentive to litigate the original matter. "Preclusion is sometimes unfair if the party to be bound lacked an incentive to litigate the first trial, especially in comparison to the stakes of the second trial." *Otherson v. U.S. Dept. of Justice*, 711 F.2d at 273. The arguments for not giving preclusive effect to misdemeanor convictions are that an individual may not have the incentive to fully litigate a misdemeanor offense because there is so much less at

stake, or that plea bargains create an actual disincentive to litigate these particular issues. *See Otherson*, 711 F.2d at 276.

Applicant admitted that in 1994 the police found a firearm in a vehicle he was driving. He denied knowledge of the firearm, but pleaded guilty to illegal firearm possession. Under New York Consolidated Law Service Penal § 265.01 this offense is a class A misdemeanor with a maximum sentence to one year in jail. The file contains a one-page arrest report, which lacks a description of the basis for the arrest (GE 7). Aside from Applicant's consistent denial of culpability, there is no evidence of record for believing Applicant knowingly possessed the firearm. Because of the lenient sentence he received for pleading guilty and based primarily on unfairness, I conclude collateral estoppel does not bar Applicant from challenging this misdemeanor conviction. *See Otherson*, 711 F.2d at 273-276. I am not convinced he knew the firearm was in the vehicle he was driving. I find the 1994 offense of firearm possession was not established. I find "For Applicant" in regard to SOR ¶ 1.d in the decretal paragraph of this decision.

Applicant denied the 1999 marijuana possession offense. The arrest did not result in a conviction. The evidence does not establish the 1999 marijuana possession. Applicant refuted SOR ¶ 1.e and I find "For Applicant" in the decretal paragraph of this decision.

In 2002, the police arrested Applicant for driving while intoxicated, in violation of NYS CLS VTC § 1192.3, after he had an accident that significantly damaged his vehicle. He subsequently was found guilty of driving while impaired by alcohol and/or prescription drugs. He denied being impaired by alcohol consumption, but contended his consumption of prescription medication impaired his driving. I elect not to apply collateral estoppel and to permit Applicant to challenge this conviction. I conclude after carefully reviewing the police report of the incident, that he left the scene of the accident, and was impaired by the alcohol and prescription drug consumption while driving (DUI). He failed a field sobriety test, and did not fully cooperate in the breath alcohol test (GE 8). I find the 2002 offense of DUI was established in regard to SOR ¶ 1.f.

The two 2004 restraining orders allege criminal misconduct, which Applicant denied. There was no evidence aside from the allegations in the restraining order that Applicant committed the criminal conduct alleged in the restraining orders. Applicant's statement is sufficient to refute the allegations of criminal conduct in SOR ¶¶ 1.g and 1.h, and I find "For Applicant" in the decretal paragraph of this decision.

SOR ¶ 1.i alleges that Applicant violated 18 U.S.C. § 1001 by falsifying his 2005 SF 86 and failing to disclose information to an OPM investigator. For a violation of 18 U.S.C. § 1001 to occur, the falsification must be material. The Supreme Court defined "materiality" in *United States v. Gaudin*, 515 U.S. 506, 512 (1995): as a statement having a "natural tendency to influence, or [be] capable of influencing, the decision

making body to which it is addressed." *See also United States v. McLaughlin*, 386 F.3d 547, 553 (3d Cir. 2004).

As indicated in the discussion below, I found that Applicant falsely failed to disclose information about his 1999 charge of marijuana possession in Section 24 of his 2005 SF 86. I also concluded the other alleged falsifications were not established. If Applicant had provided an accurate answer on his 2005 SF 86 about the 1999 charge of marijuana possession, his accurate answer would not be capable of influencing the government to deny his security clearance. His 1999 marijuana possession charge is not sufficiently important derogatory information. The 1999 marijuana possession charge occurred about five years before he signed his SF 86. The 1999 marijuana possession did not result in a conviction, and the underlying conduct was not established. It was not sufficiently serious[13] to jeopardize approval of his security clearance. Making a false statement under 18 U.S.C. § 1001 is a serious crime, a felony (the maximum potential sentence includes confinement for five years and a $10,000 fine). However, in this instance the element of materiality is not established, and thus, making a false statement under 18 U.S.C. § 1001 is not established.

In sum, AG ¶¶ 31(a) and 31(c) apply with respect to some or all of the offenses in SOR ¶¶ 1.a, 1.c, and 1.f.

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

> (a) 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;
>
> (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
>
> (c) evidence that the person did not commit the offense; and
>
> (d) 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.

AG ¶ 32(a) applies to mitigate Applicant's throwing a log through a window in 1990, as alleged in SOR ¶ 1.a. So much time has elapsed since he broke the window (18 years), giving this offense low probative value as a security concern. Moreover, at the time of this offense, Applicant was a minor. This type of vandalism offense has not recurred, and is "unlikely to recur" in the future. As such this offense, "does not cast doubt on [Applicant's] reliability, trustworthiness, or good judgment."

[13] In Applicant's case, this includes aspects such as, the seriousness of the misconduct, and the number of violations of the law, regardless of whether the misconduct resulted in an arrest or conviction.

AG ¶¶ 32(a) – 31(b) do not fully apply to the offense in SOR ¶¶ 1.c and 1.f. Possession of marijuana in 1994 with intent to distribute is a felony. Applicant's DUI occurred in 2002, which is somewhat recent. Applicant admitted minimal culpability, but took legal responsibility for his criminal conduct. These two criminal offenses are not isolated. They continue to cast doubt on Applicant's current reliability, trustworthiness and good judgment. He was not pressured or coerced into committing the criminal offenses.

AG ¶ 32(c) applies to some offenses but not to others. As indicated previously the offenses in SOR ¶¶ 1.a, 1.c, and 1.f are established and substantiated. The offenses in SOR ¶¶ 1.b, 1.d through 1.i are refuted and not substantiated.

AG ¶ 31(d) partially applies. There is some evidence of successful rehabilitation, including the passage of about six years since his DUI in 2002. Criminal activity has not recurred. He expressed remorse concerning his youthful indiscretions, and he did accept responsibility for some of his misconduct. He has received some job training, and has an outstanding employment record. However, his post-offense behavior is insufficient to fully mitigate the very serious misconduct in this case as described in SOR ¶¶ 1.c and 1.f.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

> 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.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case:

> (a) 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; and
>
> (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

The SOR alleges that Applicant deliberately provided false information or omitted required information on his 2005 SF 86 and to an OPM investigator in 2006. Applicant's

falsification of Section 24 of his SF 86 is substantiated; however, the other three allegations of falsification are not substantiated.

For Section 24 of his SF 86, he responded, "YES" and listed his DUI arrest in August 2002. However, he did not disclose his 1999 marijuana possession charge. In response to interrogatories he said, "I did not know dismissals counted. [I d]id not remember. I was under the understanding that it was a booking (detainment) not an arrest. I was never given my rights." (GE 3 at 2). At his hearing, he said he was not sure of the difference between being charged and a conviction (R. 43-44, 143-144). He said that he did not understand that he had to disclose information that did not result in a conviction (R. 143). He also said he disclosed the March 10, 1994, marijuana possession offense and indicated he received a fine and probation in response to Section 21 of his SF 86 (R. 143). These explanations for not disclosing his 1999 marijuana possession charge are not credible. He has misdemeanor involvement with law enforcement and the courts in 1990 and 1993, and a felony conviction in 1994, followed by misdemeanor convictions in 1994 and 2002. He impressed me as a very intelligent, knowledgeable Applicant. By 2005, when he completed his SF 86, he was well aware of the significance of being charged, and deliberately chose not to disclose the requested information about his 1999 marijuana possession charge. The falsification of an SF 86 need not be a material falsification to constitute a security concern. Here, the 1999 marijuana possession charge was not material, but it is of sufficient importance to be a security concern.

For SOR ¶ 2.b, Applicant's vehicle was totaled in an accident. His insurance company arranged for their salvage yard to pick up Applicant's vehicle. His vehicle was not repossessed by the lien holder. A credit report's statement about a vehicle being repossessed is outweighed by the letter from the insurance company about the salvage yard taking Applicant's vehicle. He did not knowingly fail to disclose repossession of his vehicle on his SF 86 with intent to deceive.

For SOR ¶ 2.c, Applicant disclosed his 2003 family court litigation over custody of his son. However, he did not disclose the August and September 2004, restraining orders against Applicant in response to Section 40 of his SF 86. He said he did not disclose them because they were dismissed and he viewed them as part of the custody litigation that he disclosed previously on his SF 86. Because of the apparent linkage to the custody issue, his disclosure was sufficient.

SOR ¶ 2.d alleges that on September 12, 2005, Applicant did not disclose sufficient information to an OPM Investigator about his 1999 arrest and charge of marijuana possession of an amount greater than one half ounce and less than one and one half ounces; and the two restraining orders against Applicant in 2004. Applicant explained he did not realize he had to report a dismissed charge. He said the OPM Investigator did not ask about the restraining orders. The OPM Investigator summarized the interview, but the interview summary does not establish Applicant was asked to provide the omitted information.

I find For Applicant under Guideline E for SOR ¶¶ 2.b, 2.c, and 2.d. However, I specifically find that AG ¶ 16 (a) applies with respect to SOR ¶ 2.a.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

> (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
>
> (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.
>
> (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
>
> (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
>
> (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
>
> (f) the information was unsubstantiated or from a source of questionable reliability; and
>
> (g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions in AG ¶ 17 apply to SOR ¶ 2.a. Applicant's 2005 falsification of his SF 86, is sufficiently recent to remain a security concern.[14] He did not promptly inform the government of the falsification. He continued to deny culpability for omitting the 1999 marijuana possession charge at his hearing in 2007. He did not receive counseling designed to improve his conduct. No one advised him to

[14]The conduct in SOR ¶ 2.a cannot be considered piecemeal. The Judge is required to evaluate the record evidence as a whole and reach a reasonable conclusion as to the recency of an applicant's conduct. ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When the 2005 falsification of his SF 86 is considered in connection with the criminal conduct in 1994 and 2002, the personal conduct in SOR ¶ 2.a cannot be mitigated under AG ¶ 16(c).

falsify his SF 86. He admitted that he omitted the 1999 marijuana possession charge, and the falsification of his SF 86 is substantiated. His failure to admit responsibility for falsifying his 2005 SF 86 weighs against convincing me that similar misbehavior is unlikely to recur. The falsification of his SF 86 casts doubt on his current reliability, trustworthiness, and good judgment. His current service to the contractor and the Department of Defense is an important positive step towards rehabilitation, but it is not enough to fully mitigate his conduct.

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) 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.

Eventually Applicant admitted to security officials that he failed to disclose his 1999 marijuana possession charge on of his 2005 SF 86. His 1990, 1994, and 2002 misconduct occurred so long ago that his criminal conduct would be mitigated (in February 2008), but for the 2005 falsification of his SF 86. He provided some evidence of remorse, or regret concerning his misconduct when he repeatedly stated he wanted to put his misconduct behind him. He said he accepted full responsibility for the offenses with findings of guilty, when he pleaded guilty to those offenses. He recognized the damage his misconduct caused. His record of good employment weighs in his favor. The statements of his college instructors, his sister, an employer and customers described numerous very positive attributes such as his diligence, integrity, and enthusiasm towards his work, family and community. These factors show some responsibility, rehabilitation, and mitigation.

The evidence against mitigating Applicant's conduct is more substantial. His falsification of his 2005 SF 86 and his 1994, and 2002 offenses were knowledgeable and voluntary. (The 1990 offense was mitigated because this act of vandalism was minor and remote in time. He was a minor when he committed this offense.) He was reluctant at his 2008 hearing to fully explain the underlying facts regarding his 1994 felony-level possession of marijuana with intent to distribute. I find the police report of

the 2002 DWI to be internally consistent and credible. Applicant was unwilling to admit the role alcohol played in his 2002 DUI and fleeing the scene of an accident. His misconduct is not isolated. He did not accept full responsibility for failing to disclose the 1999 marijuana possession charge on his 2005 SF 86, instead contending at his 2007 hearing that he did not understand being charged. He had ample experience in the criminal justice system, and is an intelligent man with a bachelor's degree. He knew that he was charged in 1999 with marijuana possession, and he deliberately chose not to disclose the information on his 2005 SF 86. He was sufficiently mature to be fully responsible for his conduct. Criminal misbehavior and failure to disclose embarrassing information on his SF 86 are not prudent or responsible actions. His falsification of his 2005 SF 86 is particularly aggravating, and weighs most heavily against granting or continuing his security clearance. He did not receive counseling or therapy, and may not have a clear understanding about how to avoid future problematic situations. I have persistent and serious doubts about his judgment, reliability, and trustworthiness.

His misconduct calls into question his current ability or willingness to comply with laws, rules and regulations. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has not mitigated the security concerns pertaining to criminal conduct and personal conduct.

I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my "careful consideration of the whole person factors"[15] and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

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 J:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d and 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g to 1.i:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraphs 2.b to 2.d:	For Applicant

[15] *See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Conclusion

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

_____
Mark W. Harvey
Administrative Judge