



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-13228  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: *Pro Se*

June 19, 2008

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on March 2, 2007. On January 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F and Guideline E that provided the basis for its action to deny her a security clearance and refer the matter to an administrative judge. 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 acknowledged receipt of the SOR on February 6, 2008. She answered the SOR in writing on February 26, 2008, and requested a decision without a hearing. On March 26, 2008, the government submitted a File of Relevant Material (FORM) consisting of seven exhibits (Items 1-7). DOHA forwarded a copy of the FORM to

Applicant and instructed her to respond within 30 days of receipt. No response was received by the May 4, 2008, due date. On May 27, 2008, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Based upon a review of the government's FORM, including Applicant's Answer to the SOR allegations (Item 3), eligibility for access to classified information is denied.

### Findings of Fact

DOHA alleges under Guideline F, financial considerations, that Applicant owes delinquent debt totaling \$16,256 (SOR ¶¶ 1.a through 1.u), and that as of November 2007 she had a negative cash flow of \$231.80 each month (SOR ¶ 1.v). Under Guideline E, personal conduct, Applicant is alleged to have deliberately falsified her March 2007 e-QIP by denying that she was over 180 days delinquent on any debts within the last seven years and that she was currently over 90 days delinquent on any debts (SOR ¶ 2.a). In her Answer (Item 3), Applicant admitted liability for several delinquent debts due to a divorce (SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.f, 1.h, 1.i, 1.j, 1.l, 1.m, 1.t, 1.u), but asserted the \$1,288 auto loan debt (SOR ¶ 1.j) had been paid. She admitted she also had a negative monthly balance after payment of expenses and some debts (SOR ¶ 1.v). Applicant denied the other alleged delinquencies (SOR ¶¶ 1.d, 1.g, 1.k, 1.n through 1.s). She also denied that she deliberately falsified her e-QIP (SOR ¶ 2.a), and averred she had been unaware of any debts before a "visit" from an investigator. After consideration of the evidence of record, I make the following findings of fact.

Applicant is a 41-year-old office manager who has worked for her employer since February 2007 (Item 4). The available record does not show that she has ever held a security clearance.<sup>1</sup>

Applicant had two prior marriages that ended in divorce before she married her current spouse in December 2003. While she was married to her second husband from April 1999 to October 2003 (Item 4), she began to fall behind on several financial obligations (Item 5), as set forth in the following table (Items 5, 6, 7).

Debt	Delinquency history	Status as of Jan 08
¶ 1.a \$2,673 apartment debt	\$2,673 for collection Jul 04, due since Oct 02	Unpaid, included in debt consolidation plan <sup>2</sup>

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<sup>1</sup>In a letter to DOHA of November 27, 2007 (Item 5), Applicant commented she was "anxious to receive [her] final clearance." She may well have been granted an interim clearance, but it is not documented in the record.

<sup>2</sup>Available documentation (Item 5) shows Applicant signed a debt consolidation agreement with a law firm on November 13, 2007. Applicant has indicated that the majority of her debt is included in the plan and I accept her representations on this issue.

Debt	Delinquency history	Status as of Jan 08
¶ 1.b \$25 returned check debt	\$36 for collection Mar 02, balance \$25 May 07	Planned to pay debt by mid-Dec 07, unsatisfied by Jan 08
¶ 1.c \$40 credit card balance	Opened Nov 06, \$300 credit limit, \$691 balance, \$40 past due Dec 07 on grantor closed account	Unpaid, in debt consolidation plan
¶ 1.d \$40 credit card debt	Opened Feb 07, \$554 balance Dec 07, \$40 past due on grantor closed account	Disputed by Applicant but listed on Jan 08 credit report (Item 6) as past due, no evidence of payment
¶ 1.e \$239 revolving credit card debt	Individual account opened Nov 04, \$239 charged off Dec 05	Unpaid, in debt consolidation plan
¶ 1.f \$460 cellular phone debt	\$535 charged off, \$460 balance in collection as of Apr 06	Unpaid, in debt consolidation plan
¶ 1.g \$5,162 auto loan debt	Individual installment loan \$10,967 opened Feb 01, voluntary repossession, \$4,012 charged off Feb 04, \$5,162 balance in collection Nov 07	Unpaid, listed as repossession on Mar 07 e-QIP, in debt consolidation plan but denied in Feb 08 without explanation
¶ 1.h \$529 revolving charge debt	Opened Jul 06, \$300 credit limit, \$529 past due Jan 07	Unpaid, in debt consolidation plan
¶ 1.i \$363 gas credit card debt	Opened Apr 05, \$413 past due for collection Nov 05, \$363 past due as of Oct 07	Unpaid, in debt consolidation plan
¶ 1.j \$1,288 past due balance on auto loan	Auto loan of \$26,816 opened in Feb 07, \$529 per month for 73 months, late 30 days as of Nov 07	Paid \$800 in late Nov 07, not reported to credit bureau which shows \$1,288 past due as of Jan 08

Debt	Delinquency history	Status as of Jan 08
¶ 1.k \$341 student loan debt	\$11,736 loan taken out Sep 07, \$113 monthly payments, \$341 past due as of Dec 07	No evidence of payment, per Applicant in debt consolidation plan as of Nov 07, denied debt Feb 08 without explanation
¶ 1.l \$898 collection debt	Unknown type of debt reported as \$898 for collection Jan 07	Unpaid, in debt consolidation plan
¶ 1.m \$429 wireless phone service debt	\$389 past due for collection Feb 05, balance \$429 Nov 07 in dispute with credit bureau	Unpaid, in debt consolidation plan
¶ 1.n \$370 medical debt for hospital services	\$370 for collection Feb 03, in dispute with credit bureau	Unpaid, per Applicant in debt consolidation as of Nov 07, denied debt Feb 08 without explanation
¶ 1.o \$370 medical debt for hospital services	\$370 for collection Mar 03, disputed with credit bureau	Unpaid, per Applicant in debt consolidation as of Nov 07, denied debt Feb 08 without explanation
¶ 1.p \$626 medical debt for hospital services	\$626 for collection May 02, disputed with credit bureau	Unpaid, per Applicant in debt consolidation as of Nov 07, denied debt Feb 08 without explanation
¶ 1.q \$341 medical debt for hospital services	\$341 for collection Mar 02, disputed with credit bureau	Unpaid, per Applicant in debt consolidation as of Nov 07; denied debt Feb 08 without explanation
¶ 1.r \$50 medical debt for hospital services	\$50 for collection Feb 02, disputed with credit bureau	Per Applicant to be paid by mid-Dec 07, denied debt Feb 08 without explanation, no evidence of payment
¶ 1.s \$50 medical debt for hospital services	\$50 for collection Jan 02, disputed with credit bureau	Per Applicant to be paid by mid-Dec 07; denied debt Feb 08 without explanation, no evidence of payment

Debt	Delinquency history	Status as of Jan 08
¶ 1.t \$375 collection debt	Placed Mar 01, bal \$375 as of Feb 05	Unpaid, in debt consolidation
¶ 1.u \$1,587 installment account	\$1009 for collection Dec 01, \$1529 balance past due Dec 06, disputed with credit bureau	Unpaid, in debt consolidation

In June 2003, Applicant went to work as an executive assistant for her current spouse. They married in late December 2003. From May 2005 to February 2007, she was employed as an office assistant for another company (Item 4). In February 2007, Applicant financed the purchase of a 2007 model-year car through a loan of \$26,816 to be repaid at \$529 per month for 73 months (SOR ¶ 1.j) (Items 5, 7). As of February 2007, a son from her first marriage was living outside the home but three other children bearing the surname of her second husband were living with her and her third spouse (Item 4).

Applicant went to work as an administrative professional for her current employer, a defense contractor (Item 4, Item 5), in February 2007. On March 2, 2007, Applicant completed an e-QIP. She responded “Yes” to question 27b concerning any repossessions in the last seven years, and disclosed the voluntary surrender of a vehicle in February 2001 on which she reported owing about \$4,000 (SOR ¶ 1.g) due to financial problems associated with a divorce. Applicant responded “No” to question 28a. “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” and question 28b. “Are you currently over 90 days delinquent on any debt(s)?”

A check of Applicant’s credit on March 16, 2007, revealed an outstanding charged off balance of \$4,012 for the repossessed auto she had listed on her e-QIP (SOR ¶ 1.g). Applicant also reportedly owed other delinquent balances, including \$2,673 to an apartment lessor (SOR ¶ 1.a), revolving credit card debt of \$1,131 (SOR ¶¶ 1.e, 1.h, 1.i), wireless phone debt of \$877 (SOR ¶¶ 1.f, 1.m), medical debt in collection totaling \$1,807 (SOR ¶¶ 1.n-1.s), and an installment loan debt in collection since December 2001 with an updated balance of \$1,587 (SOR ¶ 1.u) (Item 7).

In August 2007, Applicant and her third husband separated. She has since maintained a separate residence from him, at a monthly rental cost of \$1,150 (Item 5).

In September 2007, Applicant took out an educational loan of \$11,736 to be repaid at \$113 per month for 180 months (SOR ¶ 1.k).<sup>3</sup> In November 2007, DOHA asked Applicant to document the status of her delinquent debts, to furnish a current credit report, and to complete a personal financial statement. At the time, she was reportedly one month past due in her car loan (SOR ¶ 1.j) (Item 5).

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<sup>3</sup>This student loan may well be for her oldest child, who is now 20 (see Item 4).

On November 13, 2007, Applicant entered into an agreement with a law firm for debt negotiation and debt settlement services. Under the debt settlement agreement, her total debt of \$54,670 (including some current accounts) was to be settled for payments totaling \$24,602. With fees of \$11,350, she was to pay the estimated settlement amount of \$35,952 at \$571 per month starting November 16, 2007 (Item 5).

Applicant responded to DOHA's interrogatories on November 27, 2007. She indicated that the debts in SOR ¶¶ 1.a, 1.e-1.i, 1.m-1.q, and 1.t-1.u would be resolved under the debt consolidation plan, and that she would pay some of the smaller debts (SOR ¶¶ 1.c, 1.n, 1.o) by December 16, 2007. She also provided documentation showing that she paid \$800 on her vehicle loan (SOR ¶ 1.j) in late November 2007. Despite an annual salary of \$50,000 and monthly child support income of \$441, Applicant reported a monthly net deficit of \$231.80 after payment of expenses and three debts (\$529 for her car, \$372 for a line of credit opened in May 2007, and \$352 for an unsecured loan opened in July 2007). Applicant did not indicate whether she had any bank savings (Item 5).

### **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.

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 that 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 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.

Applicant has a history of financial delinquency since about 2001, when creditors began placing delinquent balances for collection (SOR ¶¶ 1.t, 1.u). Several more financial obligations became seriously past due in 2002, including a \$2,673 debt to an apartment lessor (SOR ¶ 1.a), over \$1,000 in medical debt (SOR ¶¶ 1.p, 1.q, 1.r, 1.s), and a \$36 debt for a returned check (SOR ¶ 1.b). She lost her car through a voluntary repossession for failure to make her payments during her second marriage (SOR ¶ 1.g). Yet many of her debts were incurred more recently. A revolving charge opened in November 2004 was charged off in December 2005 due to her failure to pay a relatively small \$239 balance (SOR ¶ 1.e). A cellular telephone debt of \$460 was charged off and placed for collection in 2006 (SOR ¶ 1.f). Her gasoline credit card opened in April 2005 had become \$413 past due by November of that year (SOR ¶ 1.i). She fell behind on consumer credit card accounts opened in the past two years (SOR ¶¶ 1.c, 1.d, 1.h). As of November 2007, she was late 30 days in her car payment (SOR ¶ 1.j). As of December 2007, she owed a past due balance of \$341 on a student loan taken out in September 2007 (SOR ¶ 1.k). Significant security concerns are raised by “inability or

unwillingness to satisfy debts” (AG ¶ 19(a)) and by “a history of not meeting financial obligations” (AG ¶ 19(c)).

Applicant’s financial problems are too pervasive and too recent to satisfy mitigating condition AG ¶ 20(a) (“the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment”). As of February 2008, she admitted she owed delinquent debt totaling about \$7,618 (SOR ¶¶ 1.a-1.c, 1.e-1.f, 1.h-1.i, 1.l-1.m, 1.t-1.u). Assuming the \$800 she paid on her auto loan in November 2007 (SOR ¶ 1.j) went to the past due balance on her auto loan, there is credible evidence of \$6,550 in additional delinquent debt that she now denies. Her credit card account with a balance of \$554 was closed by the credit grantor when it became \$40 past due (SOR ¶ 1.d). Moreover, the student loan account opened in September 2007 was reported on her January 2008 credit report as past due in the amount of \$341 with last activity in October 2007 (SOR ¶ 1.k). She presented no evidence of any recent payments on the student loan. As for the remaining disputed debts (SOR ¶¶ 1.g, 1.n-1.q), Applicant indicated in November 2007 that they were either included in her debt consolidation, or she was going to pay them by mid-December 2007. She offered no explanation for denying debts that she had previously acknowledged and that are listed as delinquent on one or more of her credit reports. AG ¶ 20(e) (“the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue”) does not apply in the absence of documented proof substantiating her basis for disputing them.

Applicant’s effort to bring her automobile loan current warrant a favorable finding as to SOR ¶ 1.j, but it is not enough to apply either AG ¶ 20(c) (“the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control”) or AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”). She has arranged to settle most of her debt under a debt repayment plan, but this is but a preliminary first step to resolve her debt and not a substitute for a track record of regular payments. Given her negative cash flow situation (she reported a monthly deficit of \$231.80 as of November 2007), it is not at all clear that she will be able to make the \$571 monthly payments required under the debt consolidation contract.

Applicant attributes her financial problems to her divorce (“I will say that the debt listed is a direct result of a drastic financial change in circumstances brought about by divorce.” Item 3). Yet Applicant has failed to adequately document or explain the extent to which factors beyond her control caused the majority of her indebtedness. AG ¶ 20(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”) applies only in very limited part in that the financial burden of maintaining a separate residence since August 2007 was a likely factor in her falling behind in her car loan, student loan, and recently opened credit card accounts during



the last quarter of 2007. It does not extenuate or mitigate the years of financial poor judgment evident in her repeatedly taking on new debt while old debt went unpaid. Applicant has not demonstrated that she can handle her finances responsibly.

### **Guideline E, Personal Conduct**

The security concern for Personal Conduct is set out in AG ¶ 15:

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.

When Applicant applied for a security clearance in early March 2007, she owed on several accounts that were seriously past due and had been charged off or placed for collection (SOR ¶¶ 1.a, 1.b, 1.e-1.i, 1.l-1.u). These debts should have been reported in response to the financial delinquency inquiries pertinent to debts over 180 days within the past seven years (question 28a) and to debts currently over 90 days delinquent (question 28b). Applicant instead responded "No" to both questions.

Under AG ¶ 16(a) personal conduct concerns are raised by the "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." Applicant does not contest that she answered "No" to the debt inquiries, but submits she did not intentionally falsify her e-QIP. In answer to DOHA's concerns that she falsified material facts, Applicant stated, "When I completed the E-Quip, I was unaware of the items listed in this Statement of Reasons. It was only after a visit from an investigator that I became aware of these items." (Item 3).

The burden is on the government of proving knowing falsification in light of Applicant's denial. The government presented as Item 7 Applicant's credit report from March 16, 2007, showing charged off or collection balances on several individual accounts which support a reasonable inference of intentional falsification. On or more likely before March 16, 2007, Applicant had disputed with the credit bureaus her responsibility for some medical debt (SOR ¶¶ 1.n-1.s) and a wireless services debt (SOR ¶ 1.m). This shows Applicant knew before any visit from a government investigator that some accounts were being reported on her credit record as collection accounts. Even if she had a good-faith basis to believe she did not owe those debts, she has not disputed then or now her responsibility for her delinquent gas credit card in SOR ¶ 1.i, the cellular phone debt in SOR ¶ 1.f, the credit card debt in SOR ¶ 1.e, or the apartment debt in SOR ¶ 1.a. All are individual accounts that had been in collection for several months (in the case of the apartment debt since July 2004) by the time she

completed her e-QIP. There is no evidence that someone else used or handled payment of her accounts in a manner that would have kept her from knowing about them. Security concerns are raised under AG ¶ 16(a) in the absence of persuasive evidence showing she was ignorant of her debt when she completed her e-QIP. Her listing of the car repossession in response to question 27b did not relieve her of her responsibility to report other delinquencies under question 28a and/or 28b. Concerns as to whether Applicant has been fully candid about the reasons for the omission of delinquent debt from her e-QIP preclude me from considering AG ¶ 17(a) (“the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts”), even though Applicant is credited with acknowledging several of the debts when she responded to DOHA interrogatories in November 2007.

### **Whole Person Concept**

Under the whole person concept, the administrative judge must evaluate an Applicant’s eligibility for a public trust position 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 public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The government must be assured that those persons with classified access can be counted on to exercise good judgment at all times. Applicant remains under a significant debt burden that is not likely to be resolved in the near future. She indicated in November 2007 that she was operating at a net deficit each month and she reported no savings to draw on. In the absence of a demonstrated ability to handle her finances responsibly, and due to persistent personal conduct concerns, I am unable to conclude that she possesses the requisite good judgment that must be demanded of those in a position of trust.

## 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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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ELIZABETH M. MATCHINSKI  
Administrative Judge