



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



In the matter of: )  
)  
) ISCR Case No. 07-14477  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel  
For Applicant: *Pro Se*

August 29, 2008

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant has a history of failing to meet his financial obligations. As of the date of the hearing, he had 12 accounts, owing approximately \$13,602 most of which had been delinquent for many years. His evidence is insufficient to show that he has a track record of financial responsibility. He failed to mitigate security concerns regarding Guideline F (Financial Considerations). Clearance is denied.

**Statement of the Case**

On November 16, 2005, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or Standard Form (SF) 86.<sup>1</sup> On April 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, 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*

<sup>1</sup> GE 1.

*Program* (Directive), dated January 2, 1992, as amended, modified and revised.<sup>2</sup> The SOR alleges security concerns under Guideline F (Financial Considerations). It 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 answered the SOR on April 26, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on June 4, 2008. DOHA issued a notice of hearing on June 10, 2008. The hearing was convened as scheduled on June 30, 2008. The government offered Government Exhibits (GE) 1 through 10, which were admitted without objection (Tr. 41). Applicant testified on his own behalf, and presented one witness and 16 documents identified as Applicants Exhibits (AE) 1-16 (Tr. 52). DOHA received the transcript of the hearing (Tr.) on July 11, 2008.

### **Findings of Fact**

Applicant denied all the SOR allegations, with the exception of SOR ¶¶ 1.b and 1.c, which he admitted. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 54-year-old Information Technology (IT) software developer/infrastructure technology manager working for a Government contractor (Tr. 29-30). He received his Bachelor's Degree in India in 1977. He traveled to the United States in 1981 under a graduate student visa and has remained in the United States thereafter. In 1983, he completed his Master's Degree in Mechanical Engineering at a U.S. university (Tr. 6). He became a naturalized U.S. citizen in 1997. He has worked for his current employer, a Government contractor, since 2005. He received interim access to classified information at the secret level in 2005 and worked on several classified projects (Tr. 30). His access was withdrawn pending resolution of the allegations in the current SOR. There is no evidence he ever compromised classified information or that he has failed to follow the rules for handling classified information. He has no police record, and there is no evidence he has used or trafficked in illegal drugs.

Applicant has been married twice. He married his first wife in 1978 in India, and they were divorced in 1994. He has a 27-year-old daughter and a 20-year-old son of this marriage. Applicant does not have any legal child support obligations with respect to these children. However, he testified both are financially dependent on him. He married his current wife in 2001. They have a five-year-old son born of this marriage.

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<sup>2</sup> On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines 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.

Applicant's wife was born in India. She became a Canadian citizen, and was a Canadian resident prior to marrying Applicant. She has lived in the United States with Applicant since 2001. She was unable to work in the United States because she lacked a work permit (Tr. 103). She is in the process of applying for her U.S. citizenship. After her son's birth she decided to stay home and take care of her son. She is a homemaker and does not contribute financially to the household.

## **Financial Considerations**

Applicant's background investigation addressed his financial situation and included the review of his security clearance application, his answers to DOHA interrogatories, six credit bureau reports (CBRs) from 2005 (GE 4), 2007 (three, GE 5-7), and 2008 (two, GE 8 and 9), and records of judgments entered against Applicant. The SOR alleges 25 delinquent/charged off accounts totaling approximately \$61,405.

Applicant has worked in the IT field most of his life. Prior to September 11, 2001, he was fully employed working as an independent contractor for an IT company on the East Coast of the United States. He was earning around \$120,000 a year as a software consultant and developer (Tr. 32, 92). After September 11, the IT market demand dried up and Applicant lost his job. He claimed he was unemployed or underemployed from October 2001 to April 2004. He said he was only able to work part-time jobs during 2002, and that he was out of work most of 2003 (Tr. 92-94). He received unemployment benefits. Applicant explained he was forced to use his credit cards to pay for his family's day-to-day living expenses. He accumulated numerous debts which became delinquent and remained delinquent to the hearing date.

During his unemployment period, Applicant became sick and was hospitalized. He stated that because he was unemployed he had no medical insurance to pay for his blood pressure medications. In 2003, he was forced to take a \$50,000-a-year job on the West Coast to be able to provide for his family. In 2004, his luck changed and Applicant obtained full time employment. He continued to work full time, and made good money, until around March 2008 when his interim clearance was withdrawn. Although he received lucrative employment offers from many government agencies, Applicant cannot accept any employment offers until he receives a security clearance. He has been forced again to take part-time employment or to be underemployed.

Applicant admitted most of the debts from 2001 to 2004 alleged in the SOR were legitimately his debts (Tr. 32). He is disputing some of the debt's totals (limit fees, late fees, and high interest rates), and claimed other debts are not valid or were not his debts. Concerning SOR ¶ 1.a, Applicant explained the debt arose out of a broken apartment lease. He rented an apartment and when his job contract ended, he vacated the apartment and failed to pay five months rent (Tr. 74-82, 141). In 2006, the creditor filed suit and Applicant received summons to appear in court. He failed to appear in court and a \$2,761 judgment was filed against him. He claimed that in 2007 he hired an attorney to assist him to settle this debt, but the creditor is asking for \$9,000 to settle.

Applicant has refused to pay the \$9,000. After his hearing, he sent a settlement offer to the creditor (AE 16, encl. c).

Applicant acquired the credit card debt alleged in SOR ¶ 1.b when he was laid off in 2001. Applicant admitted he did not contact the creditor or tried to resolve this debt until two weeks prior to his security hearing. He explained that prior to 2005 he had no money to pay or settled the debt. He then forgot about it because he received no collection statements due to his many job related moves (Tr. 143-146). Applicant settled this debt after his hearing for \$3,000 (AE 16, encl. a).

SOR ¶¶ 1.c, 1.s, and 1.y alleged credit card debts to the same creditor that were consolidated for a total debt of \$22,165. Applicant settled the debts in June 2008 for \$7,000 (AE 4). Concerning the debt alleged in SOR ¶ 1.d, he explained he purchased a \$6,000 television and stereo set from Sears in 1999. One component stopped working and instead of having it repaired under his warranty contract, he selected a new component and demanded an exchange. The merchant denied the exchange and charged Applicant for the new component. Applicant has refused to pay this debt (Tr. 115, 147).

SOR ¶¶ 1.e and 1.j alleged the same debt. In 2005, Applicant leased an apartment for six months while working in Georgia. His job ended and he claimed he had no money to pay the lease so he left without honoring his contract. At his hearing, he admitted this was a valid debt and promised to pay it (Tr. 118, 154).

Applicant disputed the debt alleged in SOR ¶ 1.f and has no intention to pay it (Tr. 127-128). In 2000-2001, he entered into a wireless telephone service contract for a phone he used while working overseas. He claimed the provider promise to give him an itemized billing statement. He intended to use it to claim business call expenses from his employer. Because the provider failed to give him the itemized billing statement he was not able to claim the business use of the phone.

He initially denied the credit card debt alleged in SOR ¶ 1.g claiming he had no knowledge of this debt. His wife clarified this was a legitimate debt that needed to be resolved. Applicant used this credit card during 2001-2002 and failed to pay it. After his hearing, Applicant contacted the creditor seeking a settlement (AE 16). SOR ¶ 1.h alleged a valid debt for medical services provided to Applicant's son in 2007 (Tr. 114-115, 151). Applicant claimed he was working with his insurance company to pay the debt (AE 16 at 3). Applicant settled the debt alleged in SOR ¶ 1.i after his hearing (AE 16 at 30-31).

SOR ¶¶ 1.k and 1.l alleged the same debt concerning an apartment Applicant rented in 2004 (Tr. 69, 119, 123). He is disputing charges resulting from alleged damage to the apartment and cleaning fees. Applicant testified he was never made aware of the deficiencies when he cleared the apartment. He claimed he first became aware of the alleged debt in 2007 when he saw it on his credit report. In 2007, he and

his wife applied to purchase a home and his credit was questioned because of this and other debts. He formally disputed the debt in April-May 2008 (AE 10).

SOR ¶ 1.m concerns a legitimate debt Applicant owes since 2000 resulting from a broken apartment lease (Tr. 124-126, 156). After the hearing, Applicant made an offer to the creditor to settle the debt (AE 16). He formally disputed the debt alleged in SOR ¶ 1.n, and the debt was cancelled (AE 16, encl. G). Concerning SOR ¶¶ 1.o and 1.q, Applicant conceded he had one account with the telephone service provider back in 1998-2000 (Tr. 129, 157). He denied having two accounts with the provider. I find SOR ¶¶ 1.o and 1.q alleged the same debt. Applicant claimed he was not aware of this delinquent debt until he reviewed his 2007 CBR. He was unable to investigate the account, but promised to do so and to pay the debt if it is legitimate.

Applicant denied ever having any account with the telephone service provider alleged in SOR ¶ 1.p (Tr. 113). He was not aware of this delinquent debt until he reviewed the 2007 CBR. He also denied having any knowledge of the debts alleged in SOR ¶¶ 1.r (AE 2, Tr. 160) and 1.t (Tr. 160-161).

Concerning SOR ¶ 1.u, Applicant denied ever ignoring any U.S. court correspondence and averred he never had any dealings with the court in the allegation. In July 2008, he contacted the court and was informed the court had no claim of action pending against him (AE F). Regarding SOR ¶¶ 1.v and 1.w, Applicant initially testified he paid these accounts (See AE 2, AE 5, and 6). However, after the hearing he submitted a contradicting statement indicated that he made settlement offers on these accounts and is waiting for the creditors' response (AE 16, at 4).

Applicant missed two child support payments when he was laid off in 2001 (SOR ¶ 1.x). He credibly testified he quickly paid this debt. There is no evidence he was delinquent again in his child support obligations. Applicant has no current legal support obligation towards his adult children, and has no outstanding child support debts (AE 7).

Applicant stated that until he lost his interim security clearance, he had the ability to pay his financial obligations and past debts. He promised to pay, settle or resolve all his legitimate debts. However, he was concerned again now about his financial situation after losing his interim security clearance because he was forced to take a lesser paying job. He has received no financial counseling (Tr. 118). He and his wife handled all of his financial budgets and transactions. Applicant and his wife have two paid off vehicles. He drives a 2005 Toyota purchased new for \$32,000. He explained he earned a lot of money in 2005 working very long hours and purchased the vehicle. His wife drives a 2006 Scion XL purchased in 2006 for around \$14,000 (Tr. 110-111). Applicant owns five 401(k) accounts with a total value of approximately \$140,000 (Tr. 133).

Applicant and his family are loyal U.S. citizens. His loyalty or his family's loyalty to the United States is not an issue on these proceedings.

## 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 controlling 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,"<sup>3</sup> demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. 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).<sup>4</sup>

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<sup>3</sup> 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). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>4</sup> "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).

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 relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is well documented in his security clearance application, his answers to the DOHA interrogatories, his credit reports, and his testimony. As of the hearing date, he had 12 outstanding debts totaling approximately \$13,602 which have been delinquent for a long period of time. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Considering the record evidence as a whole,<sup>5</sup> I conclude that none of the mitigating conditions fully apply.

Applicant's conduct does not warrant full application of AG ¶¶ 20(a) or 20(b) because he did not act more aggressively and responsibly to resolve his delinquent debts between 2004 and 2008. He was unemployed and underemployed from 2001 to early 2004. He was successfully employed from 2004 to 2008 and earned enough money to purchase outright two cars totaling approximately \$46,000, and accumulated approximately \$140,000 in his 401(k) retirement plan. Notwithstanding, Applicant presented little evidence of good-faith efforts to resolve, to settle, or to pay his delinquent debts until after receipt of the SOR. Moreover, he did not make sufficient progress on resolution of his 2006 judgment. These factors cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

I specifically considered Financial Considerations Mitigating Condition 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", and conclude it applies, but only to a limited extent.

Applicant's testimony established factors that may be considered as circumstances beyond his control contributing to his inability to pay his debts, i.e., his period of unemployment and underemployment from 2001 to 2004; his medical condition and the financial expenses associated with it; the lack of financial assistance from his wife; and the birth of his son in 2002.

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<sup>5</sup> See 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 making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.

Applicant's evidence is not sufficient to show he dealt responsibly with his financial obligations between 2004 and his receipt of the SOR. Applicant has been consistently employed since 2004 and made sufficient income to pay cash for two cars and to make substantial contributions to his 401(k) plan. However, he presented little evidence to show paid debts, settlements, documented negotiations, payment plans, budgets, or financial assistance/counseling prior to receipt of his SOR. Applicant's financial history and lack of favorable evidence preclude a finding that he has established a track record of financial responsibility.<sup>6</sup>

AG ¶¶ 20(c), 20(d), and 20(e) do not fully apply. Applicant did not receive financial counseling. Since learning about the Government's security concerns, Applicant has taken affirmative steps and made significant progress to resolve, settle, or to pay his delinquent debts. I believe that if he continues his efforts, in the near future he will be able to establish that his financial problem is being resolved or is under control. At this point, Applicant's last minute addressing of his delinquent obligations does not establish good-faith<sup>7</sup> efforts in the resolution of his debts. Applicant disputed several debts and provided correspondence to document those disputes. The properly disputed debts are mitigated under AG ¶ 20(e).

### **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):

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<sup>6</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)).

<sup>7</sup> The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

(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.

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. AG ¶ 2(c).

Applicant's years of working for Government contractors weighs in his favor. Aside from his delinquent debts (which are a civil, non-criminal issue), he is a law-abiding citizen, a good father, and loving husband. He expressed regrets for his financial mistakes and, as of late, he is trying to correct them.

Considering the totality of the circumstances in his case, including Applicant's age, education, maturity, his years working for the Government contractors, he demonstrated a lack of judgment and trustworthiness in the handling of his financial affairs. Applicant admitted most of the credit card debts from 2001 to 2004 alleged in the SOR were his debts. Mainly, he is disputing limit fees, late fees, and high interest rates accrued after the debts became delinquent. Five of his delinquent debts concerned broken apartment leases. He rented apartments and when his job contract ended, he vacated the apartments and failed to honor his leases. One debt concerns his failure to appear in court and the ensuing judgment filed against him. Applicant has refused to pay that judgment. He failed to deal responsibly with his financial obligations from 2004 until receipt of his SOR. His failure to honor his contracts and to meet his financial obligations indicates poor self-control or an unwillingness to abide by rules and regulations. His behavior raises questions about his reliability, and ability to protect classified information.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has failed to mitigate the security concerns pertaining to financial considerations.

### **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
Subparagraphs 1.a; 1.d – 1h; 1.m; 1.o; 1.r; 1.t; 1.v, and 1.w:	Against Applicant

Subparagraphs 1.b; 1.c; 1.i; 1.j; 1.k;  
1.l; 1.n; 1.p; 1.q; 1.s; 1.u; 1.x, and 1.y:

For Applicant

### **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. Eligibility for a security clearance is denied.

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Juan J. Rivera  
Administrative Judge