



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



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| In the matter of: |) | |
| |) | |
| ----- |) | ISCR Case No. 08-10969 |
| SSN: ----- |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

August 31, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes delinquent debt totaling about \$14,000. While he was on active duty in the U.S. military in 2003, he was punished under Article 15 for unauthorized use of a government credit card. In November 2002, he forged and negotiated personal checks totaling \$5,350 from a fellow service member. In June 2004, he was convicted by a civilian court of depositing insufficient funds checks. His efforts to address his delinquent debt are not enough to overcome the concerns for his financial judgment. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on April 2, 2008. On February 6, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a statement of reasons (SOR) detailing the security concerns under Guideline F that provided the basis for its preliminary decision to deny him 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) effective within the Department of Defense as of September 1, 2006.

On February 25, 2009, Applicant answered the SOR and he requested a decision without a hearing. On March 19, 2009, Applicant elected a hearing, and the case was assigned to me on April 29, 2009. On May 8, 2009, I scheduled a hearing for May 29, 2009.

I convened the hearing as scheduled. Nine government exhibits (Ex. 1-9) and two Applicant exhibits (Ex. A-B) were admitted without any objections, and Applicant testified, as reflected in a transcript (Tr.) received on June 8, 2009.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant owed delinquent debts totaling \$17,219 (SOR 1.a-dd¹); that he was punished under Article 15 of the Uniform Code of Military Justice (UCMJ) in February 2003 for unauthorized use of a government credit card (SOR 1.ee); that he stole personal checks from another service member in April 2003, and forged and negotiated checks in the total amount of \$5,350 (SOR 1.ff); and that he was convicted in June 2004 by a civil court of deposit account fraud/bad checks of \$499 or less (SOR 1.gg). Applicant admitted several debts in the SOR, including 1.i-1k, 1.r, and 1.aa, which he averred had been paid. He denied the debts in SOR 1.h, 1.p, 1.q, 1.u, 1.v, and 1.bb. Applicant did not deny the financial fraud alleged in SOR 1.ee–1.gg, although he averred that the \$5,350 in forged checks had not cleared and that he was unaware of his June 2004 conviction of deposit account fraud because he was in Iraq. After considering the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is a 28-year-old quality control manager, who has worked for his present employer, a defense contractor, since March 2008 (Ex. 1, Tr. 30-31). He seeks a security clearance for his employment (Tr. 35).²

Applicant and his first wife had a son in 1996 when they were both teenagers. After Applicant graduated from high school in June 1998, he and his first wife gave temporary custody of their son to her mother so that they could join the military. Applicant entered on active duty in July 1998. He and his spouse provided financial assistance for their son until January 2000, when they married and regained full custody of their child (Ex. 1, Tr. 33). Applicant and his first wife lived off base in rental housing from February 2000 to June 2000. In October 2000, Applicant was sent overseas for a three-year tour of duty (Tr. 32). He lived in military barracks with the exception of six months in 2001 when he lived on the local economy (Ex. 1).

¹Presumably due to administrative error, there is no 1.w in the SOR.

²Applicant denies that he held a security clearance while he was in the military (Tr. 35). A military police report indicates that Applicant held a secret clearance (Ex. 2).

Applicant failed to make timely payments on some loans (SOR 1.s, 1.t) and on a line of credit account (SOR 1.m) when he was overseas, in part because he was required to repay about \$5,500 in public assistance that his mother-in-law had received from the state for the care of his son. That debt was repaid through garnishment of his military wages (Exs. 1, 5).

In November 2002, while temporarily in the U.S. for basic noncommissioned officer schooling, Applicant took leave over the Thanksgiving holiday. He had a ride with someone who got into an accident. To make sure that he arrived back at the base for his schooling, Applicant purchased an airplane ticket using his government-sponsored credit card (Tr. 35-36). He had also used the government credit card for some meals on the local economy and some personal items while he was in the U.S. for military schooling (Tr. 39). In February 2003, he received non-judicial punishment for his misuse of a government credit card. He was awarded a reduction in rank (suspended) and extra duty. When he failed to repay the credit charges of \$600 or \$700 (Tr. 37) within the time allotted, the military reduced Applicant from E-6 to E-5 (Ex. 1, Tr. 32, 36). Applicant could not afford to repay the debt in part because his pay was being garnished for the welfare payments (Tr. 38).

In April 2003, Applicant stole some personal checks from another service member. He forged this service member's signature and negotiated three checks that he made out to himself in the aggregate amount of \$5,350. Applicant deposited the checks into his account over multiple days (Ex. 3, Tr. 41-44). The checks cleared and Applicant spent the funds (Tr. 44). During an investigation by the criminal investigation command in October 2003, Applicant admitted the theft, forgery, and negotiation of the checks in order to pay his bills and care for his family (Ex. 3, Tr. 46). Applicant testified he was not punished for the offense after he told the military investigators that he had received non-judicial punishment for his misuse of the government credit card (Tr.45).

In May 2003, Applicant was transferred to a base in the U.S. His financial problems continued. The debts in SOR 1.q and 1.r were charged off and placed for collection. In October 2003, Applicant's automobile was repossessed with about \$4,500 owed on his loan (not alleged). During February and March 2004, charges related to insufficient funds checks (SOR 1.c-1.f and 1.y), and a \$950 delinquent loan (SOR 1.b) were placed for collection (Exs. 1, 5, 6, 7).

In May 2004, Applicant was discharged from the U.S. military. Within a week, he started working for a defense contractor in Iraq as a petroleum laboratory technician at \$84,000 annually (Tr. 21, 48, 88). On May 10, 2004, Applicant was charged by civilian authorities in the U.S. with two counts of misdemeanor deposit account fraud/bad checks \$499 or less (Ex. 4). On June 16, 2004, Applicant was convicted of the charges (Ex. 4).³

³Applicant testified he was unaware of the bad check charge because he had been in Iraq. During a subsequent trip back to the U.S., he was stopped in customs for outstanding warrants for his arrest (Tr. 47-48), including for criminal trespass where he had broken a windshield (Exs. 2, 4, Tr. 49). He was convicted of one count of criminal trespass in August 2005 (Ex. 4).

Applicant took his new job for the income to pay his debts, which were due in large part to insufficient funds checks (Ex. 1). Yet accounts went unpaid, including a \$325 debt owed to a check cashing service (SOR 1.cc) and cellular phone charges of \$342 (SOR 1.h). He issued bad checks to a retailer (SOR 1.i-1.k) (Exs. 5, 6), and in the summer of 2005, two debts owed the commissary from August 2000 (SOR 1.n, 1.o) were referred for collection (Exs. 5, 6, 7).

Applicant married his current spouse in January 2006. He came to the United States from Iraq for their wedding, which cost him between \$12,000 and \$15,000 (Tr. 73). In April 2006, they spent their honeymoon in Dubai at a cost of about \$10,000 (Ex. 1, Tr. 73-74). In June 2006, Applicant and his spouse took out a joint automobile loan of \$25,196. The following month, they financed a second car through a loan of \$24,547 (Ex. 7), to be repaid at \$563 per month for 74 months (Ex. A). They paid off the first loan in January 2008 and took out a new loan of \$36,000 with the same lender (Ex. 7), to be repaid at \$756 per month for 72 months (Ex. A). They made timely payments on the car loans, while other accounts held by Applicant individually were referred for collection (SOR 1.a, 1.g, 1.x, 1.z)⁴ (Ex. 6).

In March 2008, Applicant left his job and \$120,000 annual salary (Tr. 88) and started a new job in the U.S. with his present employer (Ex. 1, Tr. 30-31). The debt in SOR 1.v (duplicated in 1.bb) was placed for collection that month (Ex. 7). On April 2, 2008, he executed an e-QIP and disclosed the non-judicial punishment in 2003 for unauthorized purchases on a government-sponsored credit card, the repossession of his vehicle in 2003, and the garnishment of his wages to repay public assistance taken by his former mother-in-law while she cared for his son. In response to the financial delinquency inquiries in section 28, Applicant listed several debts (SOR 1.a, 1.b, 1.f, 1.h, 1.m, 1.n, 1.o, 1.q, 1.r (satisfied), 1.v, 1.aa, 1.cc, and 1.dd), including two unpaid loans of \$1,080 and \$3,235 that were not alleged in the SOR. He explained that debts had not been paid because he was in Iraq for the past four years and had not yet had the opportunity to contact his creditors. He cited his purchase of three vehicles since mid-2006 on which he had not missed a payment as indication that he now understands “the importance of making wise decisions and the impact poor financial decisions has on one’s credibility and character.” He expressed an intent to satisfy his outstanding debts (Ex. 1).

Applicant was interviewed by a government investigator about his delinquent debt on May 16, 2008. He admitted that several accounts were past due because of overspending and poor financial decisions. He claimed not to have known of the extent of his indebtedness until he reviewed his credit report. Applicant remembered that he had written bad checks in 2004, but he denied any knowledge of any charges filed against him in May 2004 (Ex. 9).

Subsequent credit checks in August 2008 (Ex. 6) and December 2008 (Ex. 5) confirmed that Applicant was continuing to make his car payments on time, but he had

⁴Applicant and his spouse had a daughter in June 2007 (Ex. 1), and the medical debt in SOR 1.x is from her birth (Tr. 58-60).

reportedly made little to no progress toward resolving the delinquent debts on his credit record (Ex. 5, 6). He was \$535 over the limit on a credit card account (SOR 1.l) (Ex. 5), and a \$1,035 balance was subsequently charged off and placed for collection (Ex. A).

In late summer 2008, Applicant began paying \$50 per month on the debt in SOR 1.b (Ex. B, Tr. 51). As of late May 2009, the balance had been reduced because of his payments to \$449 (Ex. A, Tr. 51). On May 15, 2009, Applicant satisfied the debt in SOR 1.n (Ex. B, Tr. 55). He made no payments on the undisputed debts in SOR 1.a, 1.c–1.g, 1.l–1.m, 1.s–1.t, 1.x–1.z, and 1.cc–1.dd (Tr. 51-62). Concerning debts that he disputed, SOR 1.h (duplicated in 1.p) and 1.q were verified as valid (Tr. 52, 56-57). The creditor allegedly holding the debt in SOR 1.u had no record of the debt (Tr. 58-59). The debt in SOR 1.v (duplicated in 1.bb) had been removed from his credit report (Tr. 59, 61), but the debt in SOR 1.o was still on his credit record. Applicant intended to accept a settlement offer on SOR 1.l, but he had not paid the \$575 as of late May 2009 (Tr. 54-55). Appellant continues to assert that the debts in SOR 1.i-1.k and 1.aa have been paid (Tr. 53, 60-61), although his May 2009 credit report does not show any payments (Ex. A).

As of May 2009, Applicant's car loans, on which he was paying \$1,319 per month, and a deferred student loan from November 2004 were his only open current accounts (Ex. A). Applicant was paying between \$300 and \$400 per month toward delinquent debts, including for cash advances that do not show up on his credit reports (Tr. 68). Applicant took out a cash advance to cover the spike in gasoline prices in summer 2008 (Tr. 69). He was paying \$50 per month toward a federal tax debt of about \$4,100 as of May 2009. He owes state taxes of about \$400 or \$500 (Tr. 69-70).

Applicant's annual salary is \$107,000 (Tr. 88). His spouse works as a secretary/administrative assistant for a private company. Their joint take-home pay is about \$7,800 per month (Tr. 66). Applicant estimates their joint net remainder to be about \$400 or \$500 per month due to a recent pay raise that increased his net take-home by \$280 to \$290 per paycheck (Tr. 75-76). Applicant is current in his child support payments for his son (Tr. 34). In addition to child support, he covers \$460 in private school tuition and \$150 in orthodontic costs for his son each month (Tr. 65). Once his cash advance debts are satisfied in August 2009, he will have the funds to allot to other debts (Tr. 72). Applicant acknowledges that he could have been more aggressive in resolving his old debts, but he wanted to make sure that he had some savings if he should lose his job (Tr. 75, 83-84). Applicant now relies heavily on his debit card for any purchases (Ex. B, Tr. 86).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

While Applicant was in the U.S. military from July 1998 to May 2004, he exercised extremely poor financial judgment in writing checks knowing that he did not have the funds to cover them, in taking cash advances beyond what he could reasonably afford, in spending about \$5,350 in cash assets stolen from a fellow service member by check fraud, in using a government-sponsored credit card for personal expenses, and in falling delinquent on several loan accounts. With limited exception (SOR 1.r), he made little effort to address his consumer credit debts despite annual income exceeding \$80,000 since May 2004. Applicant owed about \$14,350 in delinquent debt balances as of December 2008, excluding the following: cash advance debts that are not reflected in his credit reports; those debts that have been paid (SOR 1.r, 1.aa); and those debts that have been removed from his credit record and not verified (SOR 1.u, 1.v.). Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(d), "deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust," apply.

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," cannot reasonably be applied in mitigation. Although there is no evidence that Applicant has written any bad checks in recent years, he exceeded his credit limit by \$535 on a low limit credit card account opened in November 2005 and then stopped payment on the balance (SOR 1.l). He has yet to satisfy most of his delinquent debt.

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 in limited part. Applicant had to repay about \$5,500 in welfare payments that his former mother-in-law received while she had temporary custody of his son. The garnishment of his wages left him without the income to meet his financial obligations, and it explains the reliance on cash advances. However, it does not extenuate the knowing misuse of his government credit card for personal items or his larceny of \$5,350 from a fellow service member. Nor does it mitigate his delay in contacting his creditors and his continued inaction on many of his delinquent balances. Applicant acknowledges that he could have acted more aggressively to resolve his debts.

Applicant's admitted tendency to put his personal interest first is evident in his expenditure of \$12,000 to \$15,000 for his wedding and another \$10,000 for his honeymoon, and more recently in his financing of the purchase of two new cars. He took on car payments totaling \$1,319 per month while creditors were not being repaid. He is credited with making monthly payments on the debt in SOR 1.b since late summer 2008, and in satisfying SOR 1.r in May 2007 and SOR 1.n in May 2009, but this is not enough to fully apply AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

As of late May 2009, Applicant reported net discretionary funds of \$400 or \$500 each month due to a recent pay raise that increased his net take-home by \$280 to \$290 per paycheck. His checking account statement covering the last 90 days shows that he relies heavily on his debit card for purchases, which is a favorable change in his personal financial habits from when he wrote checks without regard to whether he had the funds to cover them. His car loan payments have been timely. Yet his financial situation has not been sufficiently resolved to where I can conclude it is under control. He is making payments on cash advances that should be satisfied as of August 2009, but he still owes back taxes of about \$4,000 that take priority over the delinquent debts in the SOR. Under the circumstances presented, it would be premature to apply 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.”

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,” is implicated, but only in part. Concerning SOR 1.v (duplicated in 1.bb), Applicant did not recognize the debt when he was interviewed in May 2008 and it was removed from his credit record after he disputed it. He indicated that the creditor in SOR 1.u had no record of his debt. It appears on his credit record as a charged off credit card as of January 2002. In the absence of any recent proof that it is still owed, AG ¶ 20(e) applies to SOR 1.u. Similarly, Applicant has consistently maintained that the debt in SOR 1.aa was paid by garnishment. As of April 2008, it was being reported as a \$208 debt balance in collection (Ex. 7), but the debt is not listed on subsequent credit reports (Exs. 5, 6, A). However, Applicant’s claimed satisfaction of the debts in SOR 1.i, 1.j, and 1.k in 2000 is not sufficiently substantiated. His May 2009 credit report (Ex. A) indicates March 2004 as the date of first delinquency for those accounts, and they remain on his credit report.

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 conduct and all the circumstances in light of 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.

The DOHA Appeal Board has addressed a key element in the whole-person analysis in financial cases stating, in part, “an applicant is not required, as a matter of

law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ‘ . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’” ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant became a father when he was a teenager. When he was not yet 18, he enlisted in the military, which showed some initiative on his part to make a better life for himself and his family. Some financial over-extension and even his use of the government credit card to buy a plane ticket so that he would return on time from leave are extenuated by immaturity, but the theft and negotiation of checks from another service member raises very serious concerns about his judgment, reliability, and trustworthiness. Those concerns are compounded by his failure to make concerted efforts to address his delinquent debts after he started working for a defense contractor at \$84,000 a year. Some of his financial decisions, such as the financing of a 2008 vehicle through a loan of \$33,169 in January 2008, are difficult to justify when he owes delinquent debt.

I do not doubt the sincerity of his intent to resolve his debts. Applicant has been very open about his financial situation and fraudulent financial activities. But he has yet to take sufficient steps to address most of the debts in the SOR, even knowing that his financial situation is of concern to the Department of Defense. In the absence of adequate assurances that the delinquent debts are likely to be resolved in the near future, I cannot conclude that it is clearly consistent with the national interest to grant Applicant a security clearance at this time.

Formal Findings

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

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | For 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: | Against Applicant |
| Subparagraph 1.k: | Against Applicant |
| Subparagraph 1.l: | Against Applicant |
| Subparagraph 1.m: | Against Applicant |
| Subparagraph 1.n: | For Applicant |
| Subparagraph 1.o: | Against Applicant |

| | |
|--------------------|-------------------|
| Subparagraph 1.p: | Against Applicant |
| Subparagraph 1.q: | Against Applicant |
| Subparagraph 1.r: | For Applicant |
| Subparagraph 1.s: | Against Applicant |
| Subparagraph 1.t: | Against Applicant |
| Subparagraph 1.u: | For Applicant |
| Subparagraph 1.v: | For Applicant |
| Subparagraph 1.x: | Against Applicant |
| Subparagraph 1.y: | Against Applicant |
| Subparagraph 1.z: | Against Applicant |
| Subparagraph 1.aa: | For Applicant |
| Subparagraph 1.bb: | For Applicant |
| Subparagraph 1.cc: | Against Applicant |
| Subparagraph 1.dd: | Against Applicant |
| Subparagraph 1.ee: | Against Applicant |
| Subparagraph 1.ff: | Against Applicant |
| Subparagraph 1.gg: | Against Applicant |

Conclusion

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

ELIZABETH M. MATCHINSKI
ADMINISTRATIVE JUDGE