



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-07567
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: Stephen Gardella, Esquire

05/22/2012

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant was arrested for five alcohol-related incidents between 1995 and 2010, and tested positive for cocaine use in 2005. He was diagnosed as alcohol or drug dependent, or both, in connection with three different treatment programs and a 2011 assessment, and continues to drink alcohol. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on May 30, 2009. On October 6, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines G (Alcohol Consumption), and H (Drug Involvement). 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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective in the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on November 29, 2011, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 9, 2011. The case was assigned to me on December 14, 2011. DOHA issued a Notice of Hearing on December 19, 2011, and I convened the hearing, as rescheduled due to inclement weather, on January 24, 2012. The Government offered exhibits (GE) 1 through 9, which were admitted without objection. Applicant offered exhibits (AE) A through J, which were also admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until February 8, 2012, to permit submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on February 3, 2012. On February 6, 2012, Applicant submitted additional documentary evidence marked as AE AA through SS. Department Counsel objected to the admissibility of AE AA and AE BB on hearsay grounds. Pursuant to Directive item E3.1.19, I relaxed the technical rules of evidence excluding hearsay, and provided Department Counsel the opportunity to submit evidence rebutting the truth of any facts asserted therein. Department Counsel affirmatively declined to submit any rebuttal evidence. AE AA through AE SS were admitted into the record.

### **Findings of Fact**

Applicant is a 49-year-old employee of a defense contractor, where he has worked as a mechanic in the commercial division since January 2008. He is married, for the third time, with three children ages 29, 20, and 16, and one stepchild age 11. The three youngest children all now reside with Applicant. He dropped out of high school during his junior year, and later completed a General Educational Development (GED) program. He served in the Army from 1981 or 1982 until 1988, when he was honorably discharged at pay grade E-4. He previously held a security clearance while in the Army, and during previous periods of employment with the defense contractor up until 1999 or 2000.<sup>1</sup> In his response to the SOR, Applicant admitted SOR ¶¶ 1.a, 1.b, 1.e, 1.g, 2.b, and 2.c. He also admitted parts of SOR ¶¶ 1.c, and 2.a, with an explanation. He denied SOR ¶¶ 1.d, 1.f, and 1.h, also with explanations.<sup>2</sup> Applicant's admissions, including his statements in response to DOHA interrogatories,<sup>3</sup> are incorporated in the following findings.

Applicant started to consume alcohol at age 13, and began regular heavy use at age 19.<sup>4</sup> He admitted consuming alcohol, at times to excess and to the point of intoxication, from approximately 1998 to the present.<sup>5</sup> In August 1996, he was arrested

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<sup>1</sup>GE 1; AE AA; Tr. 64..

<sup>2</sup>AR.

<sup>3</sup>GE 2 through GE 5.

<sup>4</sup>AE D; GE 9.

<sup>5</sup>AR; Tr. 26-27.

for boating under the influence (BUI) of alcohol. He was fined, placed on probation for two years, and ordered not to drive a boat in the state for two years and to attend a boater safety class.<sup>6</sup>

Applicant voluntarily entered and completed an inpatient hospital detoxification and chemical dependency treatment program during October and November 1997. At the time of his admission, his blood alcohol content (BAC) was .157, but his urine tested negative for any drugs of abuse. Based on his self-reported drug and alcohol abuse history, his admission and discharge diagnoses by a physician were alcohol dependence, alcohol withdrawal, cocaine dependence, cannabis dependence, methamphetamine dependence, and alcoholic gastritis. The doctor who performed a physical examination upon admission found nasal congestion and inflamed turbinates from intra nasal drug use. Applicant now claims that he lied about using \$300 worth of pot, cocaine, and methamphetamine per week in order to be admitted for inpatient treatment of his alcoholism, for which he would otherwise only receive outpatient treatment.<sup>7</sup> In his April 2010 response to interrogatories and his November 2011 response to the SOR, however, he said that he lied about this drug use because he was embarrassed that he was only there for drinking when everyone else had major drug issues, and because the other patients told him that if he denied drug use he would be held in treatment longer for being in denial.<sup>8</sup>

On September 19, 1998, Applicant was arrested for driving while intoxicated (DWI), speeding, and improper lane use. He admitted to the arresting officer that he had consumed two or three drinks, and was taking prescription pain medication. He failed the field sobriety tests, but refused to provide a breath sample at the police station. He was convicted, fined, ordered to perform 80 hours of community service, and placed on probation for two years. He testified that he did not lose his drivers license, but court records he provided indicate that his license was revoked until reinstatement by court order on December 16, 1998.<sup>9</sup>

On June 26, 2000, Applicant was arrested for driving under the influence (DUI) in another state where he was visiting some friends. He was convicted and sentenced to four days in jail, two years of probation, and fined. Under the laws of that state, he was required to complete an alcohol/drug treatment program in order to renew his driver's license. He was unaware of this until he attempted to renew his license in 2009 and found the state had placed a hold on his renewal eligibility. From November 16 to 25, 2009, he successfully completed an outpatient treatment program to meet this requirement. The treating facility assessment was insufficient evidence of substance abuse or dependence, based on Applicant's report that his heavy alcohol use was

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<sup>6</sup>AR; GE 1; GE 3; AE B; Tr. 27-29, 68-69. He erroneously reported the date as July 1995 on his SF-86.

<sup>7</sup>GE 9; AE MM through AE PP; Tr. 29-33, 70-71, 85-86.

<sup>8</sup>GE 2; AR.

<sup>9</sup>AR; GE 2; GE 8; AE C; Tr. 33-35, 72-80.

between ages 19 and 23, with then current use of up to two beers once a month. Applicant also admitted regular marijuana use between ages 16 and 19, and regular cocaine use between ages 40 and 42 ending in 2004.<sup>10</sup>

During February 2001, Applicant attended a party at some friends' house and took a 12-pack of beer. During the evening two other people at the party had a fight and the girl hit her boyfriend on the head with a beer bottle. The hosts called for an ambulance, and the police also responded. Applicant and the hosts were taken to the police station for questioning. Applicant interrupted the police questioning of the party's hostess to assert that she was not lying to them. He was held in custody for 24 hours, then released. The initial charge of suspected procurement of liquor for a minor was dismissed on February 24, 2001, for lack of prosecution. I find that he did not procure liquor for a minor on this occasion, but his alcohol-fueled misbehavior at the police station resulted in his detention.<sup>11</sup>

During the early morning hours of January 31, 2010, Applicant and his wife were in a bar with some friends from his work. Shortly before closing time, a series of fights and disturbances broke out. Applicant had given his bank card to the bartender to run a tab for himself and some friends. According to him, he had consumed a few drinks, but did nothing wrong and was trying to close out his tab and get his card back when the bouncer started hassling him and pushing him to leave. He resisted because he did not want to leave his card there, and some friends intervened to assist him. One of the friends was then hauled out of the bar and arrested by police officers who had responded to the disturbance outside the bar. The bouncer returned and physically removed Applicant from the bar. He was also arrested and charged with disorderly conduct and criminal trespass 2<sup>nd</sup>. Trial on these charges was continued for six months on condition that Applicant pay a \$250 fine, have no contact with the bar, and have no further criminal violations during the continuance. He met these conditions, and the charges were dismissed on September 9, 2010.<sup>12</sup>

On July 3, 2010, DOHA requested Applicant to undergo an alcohol evaluation and obtain a medical prognosis concerning his resumption of alcohol consumption after diagnosis of alcohol dependence. On August 24, 2010, he was evaluated by a licensed clinical social worker (LCSW). The LCSW report, dated September 10, 2010, noted that Applicant had an extensive history of drug and alcohol involvement that included a diagnosis of alcoholism as a result of a residential stay. Applicant and his wife reported his current consumption to be two to four beers from about every three weeks to quarterly. Applicant denied any distilled alcohol or any illegal substance usage for, at least, the past seven years, which his wife confirmed. The LCSW said this accounting would indicate alcohol usage but not abuse. He encouraged Applicant to engage in sobriety and resume attendance at Alcoholics Anonymous (AA) meetings. Applicant told

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<sup>10</sup>AR; GE 2; GE 3; GE 6; AE D; AE E; AE G; AE RR; AE SS; Tr. 35-36, 80-81.

<sup>11</sup>AR; GE 2; GE 3; Tr. 37-39, 81-82.

<sup>12</sup>AR; GE 2; GE 3; AE F; Tr. 39-43, 82.

the LCSW that he agreed to engage in this process. On June 5, 2011, DOHA sent an interrogatory asking Applicant to contact the LCSW to obtain a revised evaluation to include his knowledge of Applicant's six alcohol-related charges, prior diagnosis and ongoing alcohol consumption, as well as a current diagnosis by the LCSW. On June 30, 2011, the LCSW wrote another letter stating that he did not go into detail about Applicant's past history because, based on the information he received, it was a matter of record and already in DOHA's possession. He repeated that, during one of Applicant's inpatient treatments he had been diagnosed as being alcoholic, and stated that such a diagnosis never changes. The LCSW also reiterated Applicant's and his wife's reports that he continues to use, but not abuse, alcohol. Applicant confirmed that he continues to consume alcohol in moderation on a regular basis, and does not participate in AA.<sup>13</sup>

Applicant admitted to using cocaine on one occasion in November 2005, with a friend who provided it. He now claims this is the only time he ever used an illegal drug. On December 8, 2005, he was selected to undergo a random urinalysis test at his work, and tested positive for cocaine. He successfully completed an eight-week intensive outpatient substance abuse treatment program on February 8, 2006. Treatment documentation that is in evidence does not specify a diagnosis, but states, "Client has good insight about his addiction," and required eight unannounced drug tests over the two-year period following treatment.<sup>14</sup>

Applicant's explanation for telling his various drug and alcohol dependency program treatment providers about extensive drug abuse that he now denies included the following comments:

I might have said that I used it for the same reason that I said it when I went into rehab the first time and I had lied about it. And then I might have said it because the simple fact that once you've said something, you might as well keep saying it so everything matches. . . . I have to say something to keep everything matching. I never thought in a million years that this was ever going to come back to haunt me on it, or I would have never said -- I would have never claimed it. I would have never stated it.<sup>15</sup>

Applicant submitted a notarized statement of intent never to abuse alcohol in the future, and consenting to automatic revocation of his security clearance, "should there be any violation with regard to alcohol use."<sup>16</sup> He did not provide a similar statement concerning drug use, nor did he communicate an intention to abstain from alcohol consumption altogether.

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<sup>13</sup>GE 2; GE 4; GE 5; Tr. 51-57, 59, 62, 66.

<sup>14</sup>AR; GE 1; GE 2; GE 7; AE LL; Tr. 44-46, 83-84.

<sup>15</sup>Tr. 84-85.

<sup>16</sup>AE A.

The licensed clinical social worker who provides marriage and family counseling to Applicant's wife wrote a letter expressing her positive opinions of his character and dedication to making their marriage succeed under difficult circumstances.<sup>17</sup> Eight family members, friends, and coworkers wrote letters expressing their high opinions of his character, dedication, and responsibility.<sup>18</sup> He also provided copies of his certificates honoring ten years of service at his employer and several training qualifications.<sup>19</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

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<sup>17</sup>AE I.

<sup>18</sup>AE J; AE BB through AE HH.

<sup>19</sup>AE H; AE II through KK.

A person applying for access to classified information seeks to enter 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.

## Analysis

### Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The DCs asserted by Department Counsel<sup>20</sup> are:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant was arrested for BUI in 1995, for two DUI offenses in 1998 and 2000, and for his involvement in alcohol-related disturbances in 2001 and 2010. These

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<sup>20</sup>Tr. 87.

incidents, individually and collectively, establish security concerns under AG ¶ 22(a). The evidence establishes that a “duly qualified medical professional” diagnosed Applicant with alcohol dependence in 1997, as required by AG ¶ 22(d). In 2010 and 2011, a licensed clinical social worker who is a staff member of recognized alcohol treatment program evaluated him as alcohol dependent, so AG ¶ 22(e) was also raised by the evidence. Applicant has resumed drinking after each of his three substance abuse treatment programs, and committed two DUIs within the three years following his inpatient treatment in 1997, raising substantial concerns under AG ¶ 22(f). I was unable to find evidence that Applicant failed to comply with any court order regarding alcohol education, evaluation, treatment, or abstinence, so AG ¶ 22(g) was not established. However, the SOR alleged, and the evidence clearly supported, security concerns under AG ¶ 22(c), “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.” Department Counsel’s failure to argue for its application does not preclude my consideration of those concerns.

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);
- (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and
- (d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant has a long history of alcohol abuse. This includes multiple alcohol-related offenses, the most recent of which occurred in 2010, more than six months after submission of his pending security clearance application. His ongoing consumption of alcohol, despite multiple diagnoses of alcohol dependence and treatment programs,



precludes a finding that recurrence is unlikely. He failed to establish mitigation under AG ¶ 23(a). He has relapsed after each of his three inpatient and outpatient treatment programs, and his continuing consumption and failure to attend AA are contrary to treatment recommendations, so Applicant failed to establish mitigation under the terms of AG ¶¶ 23 (b), (c), or (d).

### **Guideline H, Drug Involvement**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The DCs supported by the record evidence are:

- (a) any drug abuse;
- (b) testing positive for illegal drug use;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence; and
- (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program.

Applicant admitted to use of cocaine in November 2005, resulting in a positive random urinalysis test in December 2005. He admitted to additional marijuana and cocaine abuse during his 2009 treatment program assessment. He also admitted to sufficient marijuana, cocaine, and methamphetamine abuse to be diagnosed by a physician as dependent on all three drugs during his 1997 hospitalization for inpatient detoxification treatment. A licensed social worker on the staff of a recognized drug treatment program evaluated him to be addicted during his treatment for cocaine abuse in 2006. I find that his various explanations for allegedly falsifying these admissions to be less than credible, and conclude that substantial security concerns are raised under all four of the foregoing DCs.

AG ¶ 26 provides conditions that could mitigate security concerns:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

- (b) a demonstrated intent not to abuse any drugs in the future, such as:
- (1) disassociation from drug-using associates and contacts;
  - (2) changing or avoiding the environment where drugs were used;
  - (3) an appropriate period of abstinence; and,
  - (4) a signed statement of intent with automatic revocation of clearance for any violation;
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and,
- (d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant's last known drug use was in November 2005. He successfully completed his subsequent outpatient treatment program, and says that he has not resumed drug abuse since then. However, his unconvincing attempts at minimization and denial of extensive prior drug abuse, and valid diagnosis of drug dependence, preclude a finding of mitigation under AG ¶¶ 26(a) or (b). Abuse of prescription drugs was not alleged in this case, so AG ¶ 26(c) is inapplicable. Applicant admittedly abused cocaine in 2005, after being diagnosed and treated for cocaine dependence in 1997, so his completion of another drug treatment program in 2006 provides very limited mitigation under AG ¶ 26(d), particularly in the absence of a favorable prognosis by a duly qualified medical professional.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has numerous friends and family members who support him and believe that he learned from his past bad choices. He is a good family man, who wants to set a good example for his children and live up to his wife's expectations.

However, Applicant is a mature individual who is accountable for his choices and actions. His susceptibility to pressure or duress in the face of potentially unpleasant consequences is demonstrated by his attempts to conceal his past drug abuse problems. He demonstrated a willingness to be deceitful in order to obtain desired but undeserved results. He continues to consume alcohol whenever he chooses, despite multiple diagnoses of dependence, and recommendations that he abstain from drinking and participate in AA. He was arrested during an alcohol-related incident again during the pendency of his security clearance application, and was caught using cocaine by a random urinalysis test as recently as 2005.

On the whole, the evidence fails to establish rehabilitation or other permanent behavioral changes. Applicant provided insufficient evidence of good work performance or good character to overcome the resulting security concerns. Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his alcohol consumption and drug involvement.

### **Formal Findings**

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

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a through 1.h:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a through 2.c:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by 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.

DAVID M. WHITE  
Administrative Judge