DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 09-08550
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

November 9, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on July 20, 2010. The SOR enumerated security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In an undated response, received by DOHA on August 2, 2010, Applicant denied the two allegations set forth under Guideline F, provided explanations regarding each account at issue, and requested a hearing before an administrative judge. DOHA assigned the case to me on September 8, 2010. The parties proposed a hearing date of October 6, 2010. A notice setting that date for the hearing was issued on September 8, 2010. I convened the hearing as scheduled. Department Counsel offered four documents, which were admitted as exhibits (Exs.) 1-4 without objection. Applicant testified and presented seven documents, which were accepted into evidence without objection as Exs. A-G. Applicant was given until October 15, 2010, to submit any

additional documents. Applicant then requested an extension in order to obtain certain materials from his lawyer. In the absence of an objection, Applicant was given until October 29, 2010, to submit any additional documents. In the interim, a transcript of the proceeding (Tr.) was received on October 12, 2010. On November 1, 2010, Department Counsel forwarded two additional documents that were timely received from Applicant. They were admitted into the record as Exs. H-I without objection and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant met his burden in mitigating security concerns. Clearance is granted.

Findings of Fact

Applicant is a 52-year-old department manager who has worked for the same defense contractor for over 32 years. He started as a summer guard and was later elevated to a management position. Applicant was granted a security clearance in 1979, which he has maintained without previous incident. He has earned associate's degrees in business administration and criminal justice. He is divorced and has one adult daughter.

Applicant describes himself as "very happily single."[1] In the spring of 1992, he returned home from work one night: "I came into the apartment, put the key in, I heard an echo and I said uh-oh, this sounds empty, and the apartment was emptied."[2] He discovered that his wife had cleared their home of their possessions and left him. Included in the missing possessions were credit cards.[3] The two credit cards at issue were individual accounts in Applicant's name on which Applicant's ex-wife had signature authority.[4] When their divorce was granted in February 1996, Applicant still believed the two might reconcile. Consequently, he did not pursue any form of settlement on any outstanding debts from their marriage, nor did the divorce decree address any joint debts. He does not recall a private agreement between the two regarding their debts.[5] Since their divorce, relations between the two have grown increasingly acrimonious.[6]

Applicant was unaware of the delinquent balances at issue until he was interviewed as part of the security clearance application process on October 22, 2009.

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[1] Tr. 11.

[2] Tr. 20. Applicant stated that the year at issue may have been 1993, conceding that he is bad at dates. Tr. 43.

[3] Tr. 21.

[4] The account noted in SOR allegation ¶ 1.b appears to have been opened in 1997, a year after the date Applicant provided as his 1996 date of divorce. Applicant had no recollection of this account. He stated that if this card was opened in 1997, "then there's a real problem." Tr. 44.

[5] Tr. 23.

[6] *See*, *e.g.*, Tr. 40, 54. Given the bitterness between the two, Applicant's ex-wife is unwilling to help Applicant explore or resolve the accounts at issue.

When first apprised of the accounts, he was surprised.[7] During their marriage, the couple had only used his credit cards for nominal expenses, such as gasoline.[8] When he saw the large balances owed, Applicant initially reasoned that "they were my ex-wife's debts and I had no reason to pay them back."[9] He did not pursue the issue after his interview because "once I received the letter from the interviewer that my clearance should remain intact, I really didn't see any reason to go forward with it."[10] Applicant noted that his ex-wife had custody of the cards after she left him.[11] Applicant has only maintained two credit cards on his own, neither of which is delinquent.[12] He believes the delinquent balances were accrued during or around the time of his separation, which lasted between 1992 and 1996.[13] It was not his practice to monitor their accounts when he was married. Rather, it was his practice to pay any bills which he "saw coming across the table."[14]

When asked why he has not disputed, resolved, or addressed the two accounts noted as SOR allegations ¶¶ 1.a-1.b, for collection account balances of $5,845 and $32,973, respectively, Applicant stated: "I haven't done anything about it because I didn't think it would affect me. . . . I never in a million years thought it would affect my security clearance. Had I known that, I would have cleared it up when we got divorced."[15] He also noted that the cited sums are mostly interest and penalties and, therefore, are sums "that can be worked down to a manageable amount. However, if I were to pay this amount back it would incriminate myself into admitting that it was my debt and it is not. My divorce, like most, were [sic] painful and extremely costly."[16]

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[7] Tr. 36. Applicant noted, "Your honor, if I had known she had rung up a bill of $32,000, I would be in a different courtroom right now."

[8] Tr. 35.

[9] Tr. 27-28.

[10] Tr. 28-29.

[11] Tr. 30.

[12] Tr. 22-23.

[13] Tr. 28. The accounts at issue are collection accounts. Therefore, it cannot be determined whether the underlying delinquent debts were first acquired during the time of his separation. The collection account noted at SOR allegation ¶ 1.a was opened in 2007. The collection account noted at SOR allegation ¶ 1.b is shown as opened in 2006 with a date of last activity in 2002. *See* Ex. 4 (Credit Report, dated Sep. 1, 2009). Applicant's attorney provided a sworn affidavit in which he stated the underlying accounts were opened in 1995 and 1997, respectively. Ex. I (Affidavit, signed Oct. 29, 2010). While Applicant did not manage his accounts while married, he remembered having a credit card with the creditor underlying the SOR allegation ¶ 1.a collection account. Tr. 31. He does not, however, remember having an account with the other underlying account, which was shown as opened in 1997. *Id.*

[14] Tr. 30.

[15] Tr. 23-24.

[16] Tr. 14.

In 2010, after learning the accounts remained an issue, Applicant engaged an attorney to help him resolve the credit card-related collection accounts. There is no indication whether Applicant had access before the October 6, 2010, hearing to a copy of the Government's Ex. 4, a September 1, 2009, credit report reflecting a post office box address and illegible phone number for the debt cited in SOR allegation ¶ 1.a and only a listing for a post office box address for the debt set forth as SOR allegation ¶ 1.b. Government Ex. 5, a May 2010, credit report does not note either account. Applicant surmised, however, that the balances reflected are probably mostly interest and penalties.[17] In noting that the underlying accounts were opened in November 1995 and 1997, respectively, the attorney wrote: "The problem for us in obtaining more definite information on these accounts is that neither creditor has directly contacted [Applicant]. He does not have any paperwork that would identify the accounts in more detail or provide contact information."[18] Applicant's current credit report does not include references to the two accounts at issue.[19]

There is no evidence that account and contact information has been available on Applicant's credit report since September 1, 2009, which would predate both Applicant's May 5, 2010, interview and the July 2010 SOR.[20] Notably, however, the September 1, 2009 three-in-one consolidated credit report designated dates of last activity on the accounts as December 2002 (Experian) and August 2009 (Equifax), respectively, with dates of last reporting by those same reporting bureaus shown as being in August 2009. Those collection accounts are noted by their sources, Experian and Equifax, as being opened in March 2007 and November 2006, respectively. There is no explanation as to why at least the latter account (reported by Equifax in 2009 as having a balance of $32,973, a date of last activity of August 2009, and a date of account opening in November 2006) is no longer reflected on the Government's May 2010 Equifax credit report. Adverse account entries are not generally removed from a credit report in less than seven years except as a corrective measure. It is unclear whether Applicant's attorney ever tried to dispute the accounts on his behalf.[21]

Regarding the likelihood of Applicant being contacted for these debts, his attorney noted: "[i]t does not appear that there was [sic] any charges incurred on either of these accounts within the past 6 years. The statute of limitations on contract claims

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[17] Tr. 36-37.

[18] Ex. I (Affidavit, signed Oct. 29, 2010).

[19] Ex. 3 (Credit Report, dated May 17, 2010).

[20] *See* Ex. 2 (Interrogatories, dated May 5, 2010) and SOR, dated July 20, 2010. Although a 2009 credit report in the record includes post office box contact addresses for the creditors, *see* Ex. 4 (Credit Report, dated Sep. 1, 2009), the only credit report in the record from the last 12 months or since the issuance of the SOR is from May 2010. That 2010 credit report does not reference either of these accounts. Ex. 3 (Credit Report, dated May 17, 2010), noted *supra*.

[21] Tr. 34.

in [this state] is 6 years."[22] Consequently, the attorney concluded that "[b]oth of the above creditors would have to sue [Applicant] on these accounts within 6 years of the last charges on the account or when he stopped paying the account, whichever is later. [Applicant] asserts that he has not been sued by other party."[23]

Applicant lives well within his means.[24] Aside from his primary employment with a defense contractor, where he earns approximately $65,000 a year, Applicant also maintains two other positions on a part-time status. Both positions are maintained for his love of sports, not for need of extra monetary compensation. In his capacity working for a national sports league, for which he has served for over 20 years, he earns a stipend of about $5,500 per year. For about 30 years, he has served as a part-time, but year-round, sports booster for a local college, where he is regularly responsible for cash sums of up to $10,000.[25] For these efforts, he earns a stipend of about $3,500 a year. He also volunteers with local youth sports leagues for no compensation. Applicant is devoted to his jobs and seldom takes vacations.[26] He is highly valued by all his employers for his diligence, trustworthiness, dependability, and commitment.[27] All three employers stress that they do not find him to be a security risk.[28]

Applicant's expenses are manageable. Until she withdrew from college, Applicant had paid for half of his daughter's university tuition and costs. He currently only pays for her life, health, and car insurance policies, amounting to about $300 a month. After all regular bills and expenses, Applicant has about $600 a month in disposable income.[29] He has a loan against his 401k plan, for the purchase of his daughter's automobile, on which he regularly makes repayments. The evidence shows that with regard to the two active credit cards Applicant maintains, he dutifully makes payments each month. One card is for a department store. The card is kept and used by Applicant's daughter.[30] The other credit card is for Applicant's personal use and issued through his credit union. Applicant provided evidence of regular payments from

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[22] *Id.*

[23] *Id.* The attorney further wrote, "[i]f, as it appears . . . , that the 6 year statute of limitations has run, then both the above creditors should be barred from collecting the respective accounts from [Applicant] whether or not he actually was the one who incurred the charges."

[24] *See*, *e.g.*, Tr. 18.

[25] Tr. 14.

[26] Tr. 19.

[27] Exs. B-D (Recommendations).

[28] *Id.*

[29] Tr. 39.

[30] Ex. F (Account Summary, dated Oct. 2010).

April 2007 through September 23, 2010.[31] His brief 2010 credit report reflects no past due accounts.[32] The few other accounts noted on that credit report are closed in good standing or open with zero balances. Only his 2009 credit report reflects the two adverse entries at issue, where they stand out as anomalies.[33]

Since first being granted a security clearance, Applicant has worked diligently at his job. Since learning of the two debts at issue, he has been candid with investigators and Department Counsel.[34] He continues to work with his attorney to try to research the debts at issue.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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.

The government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ."[35] The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.[36]

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[31] Ex. G (Summary, dated Sep. 29, 2010).

[32] Ex. 3 (Credit Report, dated May 17, 2010).

[33] Ex. 4 (Credit Report, dated Sep. 1, 2009).

[34] Tr. 13.

[35] *See also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

[36] ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 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). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[37] Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.[38]

Based upon consideration of the evidence, Guideline F (Financial Considerations) is pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Under Guideline F, "failure or an inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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."[39] The guideline sets out several potentially disqualifying conditions. Here, Applicant acquired two delinquent debts dating from the 1990s. In sum, they amount to approximately $38,800, including interest and penalties. They remain unaddressed. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 9(c) (a history of not meeting financial obligations) apply. With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

The debts at issue were acquired in Applicant's name in the 1990s, around the time of his separation and/or shortly after his divorce. Applicant denies related charges were his. Given the dates at issue; Applicant's passive role in the payment of marital

[37] *Id*.

[38] *Id*.

[39] AG ¶ 18.

bills; the circumstances surrounding Applicant's wife's abandonment of the family home and their ultimate separation and divorce; Applicant's consistently forthcoming comments about the debts once they were brought to his attention; and his exceptionally credible testimony at the hearing, the weight of the evidence indicates that Applicant was not responsible for the acquisition of the two debts at issue. In addition, there is no evidence that Applicant has been neglectful of any of his finances in any other way. The evidence shows that he is and has been otherwise in control of his accounts, offering proof of his regular payments on the two active credit cards he actively uses. Moreover, Applicant's credit reports show no other delinquent accounts or adverse entries. Applicant presented sufficient evidence to confirm that he lives within his means, lives simply, and lives responsibly. He devotes his time and efforts to his jobs.

Furthermore, in 2010, after learning the accounts at issue were still problematic after his late-October 2009 interview, Applicant responsibly consulted an attorney to help him research the two collection accounts at issue. Neither of those accounts continued to be listed on his 2010 Equifax credit report. This is notable since the Government's September 1, 2009, Equifax credit report, which predates both Applicant's investigation interview and SOR, is the Government's source for information about the largest debt at issue. Applicant's attorney, therefore, was correct in describing the difficulty he has had in tracking down contact information on the accounts inasmuch as those accounts are no longer reflected on Applicant's credit report. Equally curious is the fact that one or both of those account entries were inexplicably removed from at least Equifax's report before the passage of seven years since the dates of account opening. This begs the question of whether they were removed as errors or as successfully disputed. Further, while Applicant's counsel's advice regarding the state's statutes of limitation is incompatible with the standards reflected in Appeal Board jurisprudence, it is generally accurate.[40] Applicant's partial reliance on it, therefore, is reasonable. Despite obstacles, however, Applicant has responsibly tried to address these accounts. Given all these facts and Applicant's clear lack of neglect regarding these two debts, Financial Considerations Mitigating Condition (FC MC) 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) has partial application.

Since the two debts were brought to his attention, Applicant has consistently and credibly maintained that these debts were acquired by his ex-wife. He admits knowledge of one of the cards, but has consistently stated that he does not recognize the other credit card. Given the limited number of open accounts noted on his credit reports and his active reliance on only two credit cards, his limited use of credit is

[40] While some state courts have discussed the societal and judicial value of application of statutes of limitations, *see*, *e.g.*, *Carolina Marine Handling, Inc., v. Lasch*, 363 S.C.169, 175-176, 609 S.E.2d 548, 552 (S.C. Ct. App.2005), the Appeal Board has held that debts that are beyond the statute of limitations for collection cannot be mitigated solely because they are not collectible. *See*, *e.g.*, ISCR Case No. 08-01122 at 4 (App. Bd. Feb. 9, 2009); ADP Case No. 06-14616 at 3 (App. Bd. Oct. 18, 2007); ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008); ADP Case No. 07-13041 at 5 (App. Bd. Sep. 19, 2008); and ISCR Case No. 07-11814 at 2 (App. Bd. Dec. 29, 2008).

consistent with his testimony that he and his wife, together, only used their credit cards for nominal expenses. Since being apprised of the accounts, he has tried to recollect the circumstances surrounding any unaccounted for credit cards and he has retained counsel to help him figure out any relevant facts regarding them. The evidence tends to indicate these cards were out of his personal control and most likely in the possession of his ex-wife after she left him. FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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.

Applicant has tried to figure out the origin of these two collection accounts since they were discovered and became an issue. He has consulted an attorney to help him. With counsel's help, he has discovered the dates the accounts were opened, but little more because they are no longer on his credit report despite the recency of the accounts' opening dates. Relying on counsel's advice, Applicant points to his state's statute of limitations. As noted, however, the Appeal Board has determined that in claiming a good-faith effort, citing to a state's statute of limitations for collection cannot be used in mitigation solely because the debts are not collectible. Consequently, FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply.

Other than the two delinquent accounts at issue, Applicant is in control of his finances. Although there is no indication financial counseling is warranted, Applicant did not introduce evidence that he has sought nor received financial counseling, obviating application of FC MC ¶ 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). However, there is strong evidence that his finances are under control.

Applicant has raised two significant mitigating conditions regarding the two debts at issue. Investigators approached Applicant about those two accounts about two months after his September 1, 2009, credit report was generated. By the time Applicant was informed they remained at issue and the June 2010 SOR was issued, at least the largest account was no longer reported by Equifax, as noted in the May 2010 credit Equifax credit report. Consequently, Applicant and his attorney were vexed in their research on the accounts. Further vexing is the fact that the collection accounts at issue were opened between 2006 and 2007, within the seven-year window for deletion as aged. Although these debts are no longer documented and Applicant has not been contacted by either creditor, Applicant has shown that he is willing to continue his pursuit of resolving these debts. In light of his overall finances and his ability to pay whatever the original sums were, Applicant has demonstrated judgment, trustworthiness, and reliability regarding his finances. Guideline F concerns are mitigated; however, even if the raised mitigating conditions were not applicable, financial considerations security concerns are separately mitigated under the whole-person analysis, *infra*.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant 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 the facts and circumstances surrounding this case, as well as the "whole-person" factors. Many facts speak in favor of Applicant. He is a mature and highly credible man who has devoted his life to his work and his passion for sports. He has otherwise maintained a security clearance without incident since 1979. Never before have his finances or these two accounts, dating back to the mid-1990s, been an issue concerning his security clearance eligibility. He is well-regarded by his employers. Applicant has responsibly handled large amounts of cash in association with his duties as a college sports booster. Applicant has survived a bitter post-divorce relationship with his ex-wife with equanimity. He lives within his means and has helped his daughter both in and out of college. He has limited himself to two credit cards for some time, and has responsibly made regular payments on those accounts. His current credit report notes no adverse entries, although a September 2009 credit report reflects those dated entries at issue, at least one of which has since been deleted.[41] Applicant sought legal advice with regard to the two debts at issue once he learned of their existence and understood they could jeopardize his security clearance and career. He understands the gravity of his present situation. He is contrite for not having severed and resolved all financial ties with his ex-wife at the time of his divorce in the mid-1990s.

Applicant was genuinely shocked when he learned of the two debts at issue. While he recognized one account as being one on which he had made payments during his marriage, he does not genuinely recognize the larger account, which was apparently opened after their divorce. Applicant credibly denied accruing the debts at issue, a denial consistent with the evidence presented regarding his more recent credit history and finances. These two accounts stand out glaringly as aberrations which he attributes to his ex-wife. They are now approximately 15 and 13 years old, respectively. They have apparently been deleted from his Equifax credit report, despite the fact the collection accounts were opened in 2006 and 2007, respectively. While this does not prove they were prematurely deleted as errors or absolve him of those debts, if valid, it does confound his ability to address them appropriately. Similarly confounding efforts to contact these entities is the fact that the only legible evidence of contact information on the accounts, post office boxes, was on a September 1, 2009, credit report predating Applicant's interview and SOR. There is no evidence that Applicant had access to this exhibit sufficiently in advance of the hearing to initiate contact and engage in a meaningful exchange with the creditors. Given all the evidence offered demonstrating

[41] The Government only offered credit reports from September 2009 and May 2010. No credit reports from prior interim investigations or renewals, if any, were presented for comparison.

Applicant's financial responsibility, restraint, and ability to live within his means, the existence of these two delinquent debts from the 1990s bears little evidence that he is incapable of continuing to effectively protect classified or sensitive information, which is the standard by which these cases are judged. Applicant's evidence and credible explanation appropriately address and mitigate the security concerns raised. I find that he has mitigated financial considerations security concerns under both the AG and the "whole-person" concept. Clearance granted.

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:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant a security clearance. Clearance granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge