



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



In the matter of:

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ISCR Case No. 11-13048

Applicant for Security Clearance

**Appearances**

For Government: Philip Katauskas, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

10/17/2012

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**Decision**

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LYNCH, Noreen, A., Administrative Judge:

The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR was dated February 23, 2012. 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 (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on June 14, 2012. DOHA issued a notice of hearing on July 6, 2012, scheduling the hearing for September 6, 2012.<sup>1</sup> On August 24, 2012, an amended notice of hearing scheduled the case for September 25,

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<sup>1</sup>Applicant requested about a three-month delay for the hearing to complete his financial plans. In late August, he hired counsel who needed time to prepare for the case.

2012. Due to a scheduling conflict the case was rescheduled. An amended notice of hearing dated September 7, 2012, scheduled the hearing for October 2, 2012. Government Exhibits (GX) 1-14 were admitted into evidence, without objection. Applicant testified, presented one witness, and submitted Applicant Exhibits (AX) A-AA, which were admitted without objection. I kept the record open until October 12, 2012 for additional documents. Applicant timely submitted five documents, which were marked as (AX) BB-FF. DOHA received the transcript (Tr.) on October 10, 2012. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted factual allegations under Guideline F (Financial Considerations), with the exception of three. Applicant denied the allegations under Guideline E (Personal Conduct) with explanations.

Applicant is a 52-year-old lead engineer of a defense contractor. (Tr. 48) He is a retired naval officer and helicopter pilot. He received his undergraduate degree in 1982 and has completed post-graduate work. (AX N, V) Applicant has held a security clearance since 1984. (GX 1) He has been with his current employer since July 2012. (Tr. 104)

Applicant married in 1986 and divorced in April 2005. As a result of the marriage, they had three children. His first marriage ended as a result of the death of his three-year-old child. He explained that while he was deployed, his wife allowed their son to step outside where the child drowned in the pool. (Tr. 56) He states that this was the end of the marriage.

Applicant's separation and divorce was difficult both emotionally and financially. After his son's death in 1994, his wife, who blamed herself completely, was in conflict with Applicant in the marriage. The huge rift led to the separation and divorce. He also claimed that when the marriage dissolved, his wife recast him as a bad father and turned the children against him.

Applicant remarried in May 2005. He and his second wife have five children. Two other children died shortly after birth. (Tr. 60) He and his wife moved to another state to start a business. The business ended in 2006.

In May 2008, Applicant was brutally beaten and left to die. He was in a coma for three weeks, and spent six months in a hospital. He suffered massive brain damage and was unable to work for 18 months. He was not released for work as the physicians did not believe he would live very long. Despite the odds, he fought hard to walk again and refused disability payments. He wanted to return to his work. Applicant worked sporadically and had contract work which ended in 2009. He had steady work from 2010 to 2012. (Tr. 105)

He searched for work but still could not maintain his daily expenses such as rent. He was taken to court for nonpayment of rent in 2006, 2009, and evicted in 2010. He exhausted his savings.

### **Financial Considerations**

Applicant admitted that at the start of the investigation, he had failed to file his income taxes for 2008, 2009, and 2010. In 2011, he filed them, receiving a refund for those years. (Answer to SOR with attachment) He states that this was due in part to his recovery from his 2008 accident. In 2012, he entered into an agreement with the IRS to resolve his previous tax debt from 2004 and 2005. (AX BB) The tax returns from 2004 and 2005 that Applicant originally submitted were rejected by the IRS. (Tr. 124)

Applicant explained that he owed the IRS about \$198,000, which included interest and penalties. He blamed the debt on the fact that he was not allowed to claim his dependent children on his returns for those years. He also acknowledged that while the correct action would have been to address the problem, he avoided it until the IRS took garnishment actions. He was candid that he had no incentive to pay the taxes when he learned about them and neglected them. (Tr. 125) He has now entered into an installment agreement. As of July 20, 2012, his monthly payment is \$177, which will increase to \$710 in 2013. This amount will increase again later in 2013. The installment plan is three years. He still believes it was the result of the illegal and immoral actions of others. (TR. 50) Appellant submitted documentation that he pays the monthly amount through USAtax.com. He has paid August and September 2012. (AX CC-DD)

Applicant denied a history of failing to pay rent in a timely manner. He denied the court actions in 2006, 2009, and 2010. However, in his February 23, 2012, answer to the SOR, he stated that he was in negotiations with the apartment complex through legal counsel. He did not submit any documentation to support his claim.

Applicant states that he paid the debts alleged in SOR ¶ 1.e (\$15) and 1.f (\$15). He did not provide any documentation to support his claim. He also noted that two accounts are duplicates. (Tr. 55) SOR ¶¶ 1.g and 1.i are the same and 1.k is the same as 1.m.

Applicant's 2005 divorce resulted in delinquent debts. Applicant repeatedly stated that he "inherited debt from the marriage." However, he testified that they were mutual debts that were awarded to him. (Tr. 95) He did not attempt to resolve them until after the security clearance process started. Granted, he had a failed business in 2006, but he chose to remarry and start a new family. His new wife had two children from a previous marriage. (Tr.60) They took a honeymoon to a resort. (Tr. 87) From 2006 until 2008, he was employed but did not make any attempts to pay any debts. Applicant admitted that he did not make any attempt to pay the delinquent marital debts from 2005 to 2008. After his tragic injury in 2008, he was unemployed for almost a year. He worked for a contractor in 2009. He also had full employment from 2010. Despite the steady income, he has not resolved the delinquent debts.

The SOR alleges sixteen unresolved delinquent accounts totaling \$82,000. Applicant attributes these debts to the 2005 divorce. He recounts legal fees, alimony, and child support. He also refers to a failed commercial business. He spent his savings and investments in an attempt to make the business viable. The business ended in August 2006. He states that he was unaware of some of the debts concerning rent. He also noted that he does not deny the validity of the debts but rather the amounts. (Tr.97)

Applicant testified that he is in negotiations with creditors through his attorney. He also testified that he just hired the attorney because he was thinking about bankruptcy. (Tr. 81) Then he believed he would not need a security clearance in July 2012 and deferred any actions. He was planning to defer any action if he did not need a security clearance. Applicant did not submit any post-hearing documentation that supported his statement that he has been working with an attorney who is in the process of resolving the delinquent debts. Applicant also stated that he was working with an attorney from February 2012 concerning bankruptcy but decided that was not a good option. (Tr. 115)

Applicant explained that after the 2008 injury, he could not keep up with his daily expenses. His wife did not work and he worked sporadically after that time. He stated that he used his savings and pawned items so that he could feed his family. (Tr.72) They went to food banks so that they would have sufficient food.

Applicant currently earns approximately \$130,000 a year. He also has a naval pension of \$1,300 a month. After living expenses and debt repayment, he has a net remainder of \$2,497. These figures are taken from Applicant's personal financial statement. (GX 3)

## **Personal Conduct**

Applicant completed an SF 86 on August 11, 2009. He responded to Section 13C Employment Record in the following manner. Applicant worked for WBB from 1998 until 2005. (Tr. 108) He noted a reprimand for violating a security policy or rule. He did not note any firing or discharge from employment. He stated that in 2005, he left his job from WBB for mutual reasons in his November 2010 affidavit. He did not believe he had been terminated. (AX AA) He reaffirmed his claim in his May 31, 2011 subject interview with an investigator that he was not terminated from his employment with WBB.

The employer's record noted that Applicant was discharged. (GX 8). The state unemployment record also listed discharge/separation on their form. (GX 9) However, Applicant produced an email from the President of WBB. (AX aa) Applicant had an agreement with the President of the company who knew that Applicant wanted to go on to a different project after eight years at the company. The President did not indicate that Applicant was fired. At the time, Applicant did not see any human resources documentation concerning his leaving the company. (Tr.44) He provided an email that confirms the conversation and the belief that he left. Thus, he did not believe he was terminated and had nothing to disclose under Section 13C. (AX AA)

Applicant claimed that he did not leave a rental apartment in ruins despite a letter from the landlord stating the contrary. (GX 5 ) This was during his November 16, 2010 interview.

Applicant denied in a May 31, 2011 interview that he had abandoned an apartment and left significant damage to the unit. Applicant also denied that he had damaged any rental properties during his answers to September 2011 DOHA interrogatories. When Applicant responded to the September 27, 2011 interrogatories he again denied that he had damaged property in 2007.

In 2004, Applicant's adult daughter from his first marriage filed a claim of child sexual abuse against Applicant. The case was referred to Child Protective Service (CPS) and investigated. The daughter later recanted the story that she told to her psychiatrist. The child sexual abuse charges were unsubstantiated and dropped. (GX 4)

### **Recommendations**

A colleague of Applicant who he has known him for three years attests to his dedication to country, integrity and qualifications. He is aware of the financial issues alleged as a security concern and has no reservations about a favorable recommendation for Applicant. (Tr.25)

Applicant submitted many letters of reference from his naval career. (AX A -AX K). He has numerous certificates and awards from his naval career. (AX Q) He also submitted a 2011 Annual Appraisal which noted that he surpassed goals for the year and is an outstanding and valuable member of the team. (AX FF)

### **Policies**

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An 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." An 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.

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. . . .”<sup>2</sup> The burden of proof is something less than a preponderance of evidence.<sup>3</sup> The ultimate burden of persuasion is on the applicant.<sup>4</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”<sup>5</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>6</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>7</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

### **Guideline F, Financial Considerations**

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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

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<sup>2</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>5</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>7</sup> *Id.*

questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (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;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admits to not filing his taxes in a timely manner and the delinquent debts on the SOR. He also acknowledged that it was not a priority from 2005 until 2008

to pay the marital debts. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), 19(c), and 19(g).

AG ¶ 20 provides conditions that could mitigate security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant has approximately \$82,000 in unresolved delinquent debt. He states that much of the delinquent debt is marital debt from the 2005 divorce, including legal fees. He did not file taxes for certain years. He has just started his IRS installment agreement. He was divorced in 2005 which created some financial hardship. He had been gainfully employed from 1998 (after retiring from the military) until 2005. He remarried in 2005 and started a new family. He did have difficulty when he started a new business venture. The business failed in 2006 and he did not generate much income. He suffered a tragic injury in 2008 which resulted in almost one year unemployment. However, from 2009 or 2010 until the present, he has been gainfully employed. He acknowledged that he did not have financial counseling. He has been gainfully employed since 2010, and claims he has paid two small accounts, but he did not have proof of payment. He claimed he consulted a bankruptcy attorney in February 2012 and decided against bankruptcy. He then stated that he was in negotiations with another attorney who was helping him resolve his delinquent debts. He did not produce any documentation for this assertion. He believed he would lose the contract and not need his security clearance. He deferred any positive financial actions at that time. Granted, the extensive injuries in 2008 and subsequent unemployment exacerbated his financial situation. However, he has not placed sufficient priority on resolving the



delinquent debts after being employed in 2010. I find that Applicant's financial considerations concerns are not mitigated. He receives partial credit under AG ¶¶ 19(a) and 19(b).

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

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources.

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) association with persons involved in criminal activity.

As discussed above, Applicant did not believe that he was fired or terminated from WBB in 2005. He answered Question 13C to the best of his knowledge. He produced documentation that it was agreed that he left under mutual agreement. The President of the company confirmed Applicant's explanation. Applicant did not falsify his SF 86 or the November 2010 affidavit or the May 2011 interview concerning the WBB employment. Applicant was credible in his explanation concerning the CPS child sexual abuse charge. The charge was not substantiated and later dropped due to his adult daughter's recantation. Assuming that any of the disqualifying conditions apply, Applicant has mitigated the security concerns.

AG ¶ 17 provides conditions that could mitigate security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant denied all allegations under personal conduct. I find that he was credible and has refuted the falsification allegations. He also was credible concerning the child sexual abuse charge which was dropped. As to the allegations of damaged property, I find him credible as to his explanation. He denies that he left the properties in a bad condition. After considering the mitigating conditions outlined in AG ¶ 17, I conclude Applicant has mitigated the security concern under personal conduct.

### **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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

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

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. Applicant is a 52-year-old professional engineer. He has had a long and highly decorated military career. He has held a security clearance since approximately 1984. He is married and has five children. Applicant has been employed as a contractor for many years. He has many favorable employment recommendations. He is praised by his current employer.

Applicant experienced divorce, unemployment, and a tragic accident in 2008. He has made tremendous efforts to recover after his injury. He wants to contribute to his country. He incurred delinquent debts from the 2005 divorce. He did not attempt to resolve them. He did not address his delinquent debts until after the security clearance process started. He also admitted that he did not have an incentive to deal with the IRS tax issues. He has just recently addressed the tax issues.

Granted, Applicant could not meet his current expenses after his 2008 accident. He did make an effort to pay his current expenses to feed his family. He exhausted his savings. However, he chose to ignore the earlier delinquent debts. He also decided not to address or resolve the delinquent debts until he was under the threat of losing his security clearance. I do not find that he has met his burden of proof with respect to the financial considerations security concerns. Any doubts must be resolved in favor of the Government.

As to personal conduct, the allegations of falsifications were successfully refuted. Applicant produced information that he did not believe he was terminated from WBB in 2005. Thus, on his security clearance application and subsequent interviews, he believed he had nothing to disclose. This same reasoning applies to the CPS child sexual allegation. Applicant has refuted the allegation. He was credible in his denial of the damage to the rental units.

### **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.r:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.g:	For 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 a security clearance. Clearance is denied.

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NOREEN A. LYNCH.  
Administrative Judge