



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



In the matter of:

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ISCR Case No. 14-06216

Applicant for Security Clearance

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel

For Applicant: *Pro se*

10/31/2016

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Six financial judgments totaling \$21,128 were filed against Applicant between 2007 and 2008. He has not yet shown that he can handle his financial affairs responsibly. Clearance is denied.

**Statement of the Case**

On December 29, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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.

On January 29, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals

(DOHA). On February 23, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for him.<sup>1</sup> On February 25, 2016, I scheduled a hearing for March 23, 2016.

I convened the hearing as scheduled. Four Government exhibits (GEs 1-4) were admitted into evidence without objection. Applicant testified on his behalf, as reflected in a transcript (Tr.) received on April 4, 2016. I held the record open for three weeks after the hearing for documentary submissions from Applicant. I received two character reference letters, marked as Applicant exhibits (AEs A-B) on their respective receipt on April 8, 2016, and on April 11, 2016. The Government filed no objections by the April 22, 2016 deadline for comment, so the documents were admitted into evidence and the record closed on that date.

### **Summary of SOR Allegations**

The SOR alleges under Guideline F that, as of December 29, 2014, Applicant owed six financial judgments: of \$4,024 (SOR ¶ 1.a) and \$3,953 (SOR ¶ 1.b) from October 2008; \$2,292 (SOR ¶ 1.c) from June 2008; \$2,759 (SOR ¶ 1.d) from December 2007; and \$362 (SOR ¶ 1.e) and \$7,738 (SOR ¶ 1.f) from October 2007. Additionally, a \$225 medical debt was allegedly in collection (SOR ¶ 1.g). Applicant provided a detailed response in which he admitted the judgments but denied the medical collection debt. He explained that he made several “mistakes,” including taking a job at much lower pay in 2006 assuming that his income would increase. After he moved for another job, he fell behind on his rent twice. He indicated that the judgment in SOR ¶ 1.d has been paid, but he has been unable to verify SOR ¶ 1.c because his former landlord went out of business. With respect to the dental services for which his insurer denied coverage (SOR ¶ 1.g), Applicant related that claims were filed with an erroneous birthdate for him. Applicant expressed his intention to reduce or satisfy all of his debts in the next 18 months.

### **Findings of Fact**

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 40-year-old college graduate who has been employed by a defense contractor since early June 2014. He earned an Associate Degree from a community college in May 2012 and a Bachelor of Science, *Magna Cum Laude*, in computer science in May 2014. (GEs 1, 4; Tr. 24.) He seeks his first DOD security clearance to access a secured area and equipment that is classified. (Tr. 5, 34-35.)

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<sup>1</sup> The file contains no explanation for the significant delay in assigning the case to a DOHA administrative judge.

## Financial

Applicant graduated from high school in June 1995. There is no evidence about Applicant's employment before September 2001, when he began working in sales. By 2005, Applicant was earning approximately \$50,000 a year. Around January 2006, Applicant financed the purchase of a new car taking on a loan to be repaid at \$360 per month. (GE 4; Tr. 20.) In May 2006, Applicant left his employment for a sales position with a flooring company with the prospect of higher income that failed to materialize. He also had unreimbursed costs, including for food, while on travel for work. (Tr. 20.) Applicant paid his car loan on time until August 2006, when he decided he could no longer afford the car and had it voluntarily repossessed. Applicant made no inquiry about a possible deficiency balance on his loan. (GE 4.) He was unaware that he could pay the balance and assumed "that it was just going to ruin [his] credit for quite some time." (Tr. 24.) In October 2007, default judgments were filed against him of \$7,738 for the balance of the auto loan (SOR ¶ 1.f) and of \$362 in unpaid repossession fees (SOR ¶ 1.e). (GEs 1, 3, 4.)

Applicant earned approximately \$36,000 in 2006. (Tr. 20.) He fell behind on his \$705 monthly rent a few times because of insufficient income. (Tr. 22.) Each time, his landlord filed a notice of eviction. By the time Applicant appeared in court, he owed additional rent and fees. The landlord obtained judgments of \$2,759 in December 2007 (SOR ¶ 1.d) and \$2,292 in June 2008 (SOR ¶ 1.c). He claims he paid the judgments (GE 1; Tr. 21), but he was evicted in September 2008. In October 2008, the landlord obtained judgments of \$3,953 (SOR ¶ 1.b) and \$4,024 (SOR ¶ 1.a). (GEs 1, 3, 4.)

In October 2007, Applicant enrolled in online classes at a for-profit university. In August 2008, the college withdrew Applicant from its distance learning program when he failed to log on to a class for which he had enrolled. When tuition fees came due in October 2008, Applicant could not afford to pay them. A \$1,969 debt was charged off and placed for collection. Applicant eventually paid a collection agency \$900 to settle the debt in August 2013. (GEs 3, 4; Tr. 36.)

In November 2008, Applicant was fired from his job for unsatisfactory performance. Applicant had argued with his new supervisor, whom Applicant believed advocated unethical behavior. (GE 1; Tr. 20-21.)

Applicant was unemployed until January 2009, when he began working in sales for a retailer. In September 2009, he resigned and moved to his current area where he resided with a friend and his family. He paid his friend \$350 per month in rent. (GE 4.) In October 2009, Applicant began working in electronics/computer repair. While employed full time, he pursued college studies, at a local community college from September 2010 to May 2012, and at a state university from September 2012 to May 2014. (GE 1.) Applicant financed his college education through federal student loans totaling \$40,500 and private student loans totaling \$7,500. (GE 3.) In July 2013, Applicant traveled to Europe to visit a longtime friend and for tourism for ten days. (GE 1.)

In March 2014, Applicant's friend separated from his wife. Applicant moved with his friend to a new residence, although only his friend is on the lease. Applicant paid \$300 a month for his room. Applicant traveled to Europe for about a week in May 2014, again to visit his friend and sightsee. (GE 4.)

Shortly after Applicant earned his bachelor's degree, he began working for his current employer in early June 2014 at a starting annual salary of \$59,000. He also worked part time on nights and weekends for his previous employer for another month. (GE 4; Tr. 35.) On May 28, 2014, he certified to the accuracy of a Questionnaire for National Security Positions incorporated within an Electronic Questionnaire for Investigations Processing (e-QIP). In response to a financial record inquiry concerning any delinquencies involving enforcement in the last seven years, Applicant disclosed the six judgments (SOR ¶¶ 1.a-1.f) as shown on his credit report. About the judgment debt in SOR ¶ 1.a, Applicant stated, "I lost my job and had been evicted. Also there was some property damage." Concerning any efforts to satisfy the debts, Applicant indicated that he had been in contact with his auto loan lender (SOR ¶ 1.f) to arrange for repayment now that his financial situation was improving. As for the repossession fees (SOR ¶ 1.e), he had tried to contact the attorneys about the debt and would resolve it "if given a chance." About the four judgments to a former landlord (SOR ¶¶ 1.a-1.d), Applicant indicated that he paid the \$2,759 judgment by February 2008 under a payment plan. Concerning the June 2008 \$2,292 judgment, Applicant indicated, "I believe that this was either taken care of or the balance of money owed was rolled into the next court judgment." About the \$3,953 October 2008 judgment, Applicant expressed uncertainty about whether it was the same debt as the \$4,024 judgment. His former landlord had declared bankruptcy, and he had no success to date in reaching the attorneys for the current property owner. In response to financial record inquiries into any delinquency involving routine accounts, Applicant listed the vehicle repossession (SOR ¶ 1.f); his tuition debt of \$1,969, which he indicated was satisfied in July 2013; the judgment in SOR ¶ 1.a; a disputed dental debt of \$275 that he asserted should have been covered by insurance (SOR ¶ 1.g); and a \$100 credit card balance resolved in November 2011 that had been 60 days delinquent. (GE 1.)

A check of Applicant's credit on June 11, 2014, failed to confirm satisfaction of any of the four judgments awarded his former landlord or the judgments for the deficiency balance for his repossessed vehicle and repossession fees. A \$225 medical debt in collection since January 2009 was still owed. Applicant was reportedly making timely payments on a new auto loan obtained in February 2014 for \$21,243, on his private student loans, and on six credit card accounts with an aggregate balance of \$3,132. His federal student loan was in deferment. (GE 3.)

On June 27, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). About the financial judgments, Applicant indicated that he had been unaware of the judgment for the auto loan balance until he obtained his credit report. He contacted the lender, who confirmed that he owed \$12,000. Applicant expressed an intention to repay the debt, although he could not say when he would be able to pay it. About the repossession fee, Applicant planned on paying that judgment in the near future. As for the judgments awarded his former landlord, Applicant

stated that the \$2,759 judgment (SOR ¶ 1.d) was for two months of back rent and late fees and that he satisfied it in February 2008. He believed that the \$2,292 judgment (SOR ¶ 1.c) for late rent and fees had either been paid or included in the \$4,024 judgment (SOR ¶ 1.a). Similarly, he speculated that the \$3,953 judgment (SOR ¶ 1.b) for unpaid rent could be included in the \$4,024 judgment. Applicant indicated that his calls to the creditor and its lawyer had not been answered. He expressed a willingness to pay the judgments through a payment plan. About the \$225 medical debt in collection on his credit report, Applicant indicated that he paid the dentist \$200 upfront to cover his cost for the procedure and that the dentist should have filed for reimbursement with Applicant's insurer. When he noticed the debt on his credit report, he contacted the dental office and learned that a claim had been submitted with an incorrect birth date for him. Applicant admitted that he had received a collection notice for \$275 plus \$100 in collection fees, which he was disputing. Applicant indicated that he had never had any credit counseling and that his current financial situation was good. He expressed an intention to resolve his debts within the next 12 months. (GE 4.)

As of late November 2015, Applicant's federal student loan had a balance of \$46,406. His federal student loan was rated as current with a scheduled monthly payment of \$201. There is no evidence that he has made any payments. Applicant owed \$3,524 and \$3,337 on private student loans. Those student loans were rated as current although they had been past due over 90 days in July 2015. (GE 2.) Applicant initially could not explain why his private student loans had been delinquent given his income. (Tr. 41.) He later stated that he had forgotten to pay them. (Tr. 42.) He was again late in making the \$78 monthly payment on his private student loans in January and February 2016. He "just forgot to pay them again." (Tr. 43.)

As of December 8, 2015, Equifax was reporting a history of late payments on an automobile loan obtained by Applicant for \$21,243 in late February 2014. He had been late 30 days four times and 60 days five times. His account was 60 days past due in October 2015 before he paid \$1,066 in November 2015 to bring it current. (Tr. 25.) In January 2016, Applicant arranged to pay his car loan automatically to ensure that his payment is made. (Tr. 46.) Applicant made no payments on his credit cards after April 2015. Balances of \$451, \$2,961, \$1,444, and \$792 were charged off. Three other credit cards with balances of \$462, \$863, and \$724 were 150 days past due and closed. (GE 2.) His explanation for the delinquency is "very poor budgeting," he was unfocused because of a breakup in a personal relationship, and he was away from early September 2016 to late October 2016. (Tr. 47-48, 50-51, 56-57.)

At his hearing, Applicant claimed that the judgments in SOR ¶¶ 1.c and 1.d had "obviously" been paid because he continued to reside in the property. (Tr. 21, 28.) He provided no corroborating documentation. He testified that he paid cash. (Tr. 29.) Applicant admitted that he has not paid the October 2008 judgments awarded his former landlord (SOR ¶¶ 1.a and 1.b), but then testified that he could not understand why there were two judgments. (Tr. 21-22, 30-31.) He had no success contacting his former landlord and has not considered contacting the court. (Tr. 23.) Applicant was given the opportunity after his

hearing to provide clarification about the status of the four judgments on his credit report. He submitted only character reference letters.

With interest and fees, Applicant owed approximately \$13,000 for the repossessed vehicle as of March 2016 (SOR ¶ 1.f). Applicant stated with respect to settling the debt the following:

So my plan was actually to try to get about \$7,000 or \$8,000 and try to settle with the credit collection company that has it. So I'm actually currently paying half the amount of my 401(k) and I'm going to take a loan out against it once I hit that number and just pay it off with that. That is—I'm about halfway there. (Tr. 26.)

The balance of his 401(k) was about \$6,000 to \$7,000 as of his hearing in March 2016. Around November or December 2015, Applicant increased his contributions to his 401(k) to increase its balance faster. He plans to borrow \$7,000 to address his debts. (Tr. 53.)

Applicant earns \$68,000 annually for his work with a defense contractor. (Tr. 35.) He moved to his current address in July 2015 and had to furnish his apartment. He has not been late on his rent of \$500 a month. (Tr. 54-55.) Despite his income, he lives from paycheck to paycheck. (Tr. 42, 44-45.) Realizing that he has problems with budgeting and handling his finances, Applicant sought the assistance of a banker friend in February 2016. She was in the process of creating a budget for him as of March 2016. (Tr. 26, 38-39, 44-45.) Applicant does not regard his financial mismanagement as a security risk. (Tr. 51.)

## **Work References**

Applicant did not allow his irresponsibility in handling his personal financial affairs to carry over into his work. Applicant's supervisor in his previous employment found Applicant to be conscientious in performing his duties, including protecting customer's private information. Applicant could be trusted handling sensitive information. (AE A.)

A senior engineer with Applicant's employer worked with Applicant on the same project for the 15 months preceding February 2016. As project lead, this engineer found Applicant to be hardworking, extremely knowledgeable, and willing to work weekends to get the job done. He believes Applicant to be of good character. (AE B.)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "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 adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overall 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. 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 to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 concerns about financial considerations are set forth 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.

Applicant's June 2014 credit report (GE 3) shows that Applicant had four financial judgments filed against him totaling \$13,028 in 2007 and 2008 for nonpayment of rent. Around August 2006, he had a vehicle voluntarily repossessed when he could no longer afford payment. In October 2007, judgments of \$7,738 and \$362 were entered against him for the deficiency balance on his loan for the surrendered vehicle and repossession fees. A \$225 dental debt has been in collection since May 2009. Applicant claims that he paid two of the judgments (SOR ¶¶ 1.c and 1.d) in 2008, and that the \$4,024 judgment (SOR ¶ 1.a) may well be an inclusive balance of the \$3,953 alleged in SOR ¶ 1.b and late fees. He questions why two judgments were entered against him in October 2008, although he also indicated on his e-QIP that part of the \$4,024 judgment was for property damage. It is possible although not conclusively established that one of the October 2008 judgments was for unpaid rent and the other for the property damage. He also disputes the dental debt in that it should have been covered by insurance. The DOHA Appeal Board has held that a credit report can be sufficient to meet the substantial evidence standard for the government's burden of producing evidence of alleged delinquent debts. See ISCR 14-03612 (App. Bd. Aug. 2015). Applicant's uncorroborated assertions are not sufficient to overcome the evidence establishing the debts alleged in the SOR. Two disqualifying conditions, AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Applicant fully satisfies none of the mitigating conditions under AG ¶ 20. While the delinquent debts are over five years old, they continue to cast doubt on Applicant's reliability, judgment, and trustworthiness. He has known about the judgments since he obtained his credit report and listed them on his May 2014 e-QIP. Apart from calling the creditors for information about the balances and raising his contributions to his 401(k) toward borrowing from his account in the future, he has done little to resolve them. Mitigating condition 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 apply in this case.

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," is implicated only in that the judgment debts were incurred because of insufficient income. That being said, Applicant's financial problems were not entirely beyond his control. By taking a commission-based sales job in May 2006, Applicant assumed the risk that his income would not meet his expectations and could be less than in his previous job. Despite annual income of \$59,000 starting in June 2014 and \$68,000 presently, Applicant inexplicably lives from paycheck to paycheck while making no payments toward his judgment debts. Applicant has not acted responsibly toward his creditors.

Evidence of ongoing financial mismanagement is replete in his credit card defaults during the summer of 2015. His credit cards were all delinquent and closed, some with balances charged off, due to nonpayment after April 2015. To his credit, Applicant



recognized in February 2016 that he needed help in budgeting, and he obtained the assistance of a friend, a banker, who was in the process of preparing a budget for him as of March 2016. While a positive first step in regaining financial stability, 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(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” is not established without any payments toward his delinquent debts.

As previously noted, Applicant was given an opportunity after his hearing to provide further evidence about the judgments, including clarification as to why two judgments were issued in October 2008 and whether any of the judgments for rent have been satisfied. Applicant provided no evidence in this regard that could arguably satisfy AG ¶ 20(e):

(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.

Concerning the \$225 dental debt, I have no reason to doubt Applicant’s account that on noticing the debt on his credit report, he contacted the provider and learned that a claim had been filed and refiled with an erroneous birthdate for him. (GE 4.) Applicant indicates that he was contacted by a collection agency about the debt, and that he filed a dispute with one of the credit reporting agencies. Yet, he does not dispute that he received the care at issue. In that regard, he had an obligation to ensure that his debt was paid. He does not satisfy AG ¶ 20(e) without some proof of steps taken by him in 2008 or 2009 to address the issue.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).<sup>2</sup> The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

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<sup>2</sup> The factors under AG ¶ 2(a) are as follows:

(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 concern for financial considerations is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. Co-workers from Applicant's previous and current employments attest to Applicant's dedication and to the high quality of his work. In his former job, Applicant handled sensitive information appropriately. Even so, the poor judgment he has continued to display in handling his personal finances raises concerns about his willingness or ability to follow rules and regulations. It is particularly troubling that he defaulted on all of his credit card accounts and fell behind on his private student loans in the summer of 2015, after he had been apprised in the SOR that the DOD was concerned about his finances.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990). A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of the evidence to determine if a nexus exists between established facts and a legitimate security concern. Applicant has not shown the good judgment that is demanded of persons with access to classified information. Applicant has not been proactive about resolving debts that he is legally liable to repay. After considering all the facts and circumstances, it is not clearly consistent with the national interest to grant him security clearance eligibility.

### **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
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Subparagraphs 1.a-1.g:	Against Applicant
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### **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.

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Elizabeth M. Matchinski  
Administrative Judge