



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



In the matter of:	)	
	)	
	)	ISCR Case NO. 15-03742
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Benjamin Dorsey, Esq., Department Counsel  
For Applicant: Greg F. Greiner, Esq.

03/07/2017

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**Decision**

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LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline G (Alcohol Consumption), and Guideline J (Criminal Conduct), The SOR was dated November 1, 2015. 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. I received the case assignment on August 12, 2016. DOHA issued a notice of hearing on November 3, 2016, for a hearing scheduled on January 19, 2017. The hearing was postponed and rescheduled for February 10, 2017. Government Exhibits (GX) 1-3 were admitted into evidence without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-D. I held the record open and Applicant submitted another document, which was marked as AX E, and entered into the record without objection. The transcript was received on February 21, 2017. Based on a review of the

pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the factual allegations under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) with detailed explanations.<sup>1</sup>

Applicant is a 42-year-old employee of a defense contractor. She is divorced and has no children. Applicant obtained her undergraduate degree in 1998. She has worked for her current employer since 2015. (AX B) However, she has worked as a defense contractor for a number of years. She has held a security clearance since 2006. (Tr.19)

### **Alcohol Consumption**

Applicant admitted her arrests and convictions for driving while intoxicated in March 1998, June 2002, August 2004, and October 2012. The three earlier charges related to drinking and driving when Applicant was much younger and still living where she went to college.

Applicant's first incident (SOR 1.a) in 1998 was dismissed in February 1999. (GX 3) She explained that she had been drinking at her boyfriend's house, had an argument with him and left to go home early. She was stopped for a traffic violation and acknowledged her drinking to the officer. She paid the assessed fines and fees. (Tr. 21)

In June 2002, Applicant was arrested and charged with driving while intoxicated. (SOR 1.b) She was stopped for speeding near her apartment. She was questioned about drinking and acknowledged that she had perhaps two glasses of wine at a happy hour. (Answer to SOR; Tr. 22) She admits speeding so that she could arrive at another function timely. The court dismissed the charge. (GX 3) In her answer, Applicant stated that she "fully recognizes her issues with alcohol use". She stated that she was going to counseling".

In August 2004, Applicant was arrested and charged with driving while intoxicated. (SOR 1.c) She left a wedding reception, where she had been drinking. She stated that she recognized that she had too much to drink. (Tr.23) She did not dispute the charge and was found guilty of driving while intoxicated -1st offense. (GX 3) Applicant paid fees, fines and completed probation. (Tr. 24; AX C) At that time, she was in her 30's. In her answer to the SOR, she stated that her actions were irresponsible and that she made a bad choice. She completed the sentencing order, payment of fines and community service. She stated that she deeply regretted drinking and driving. She again stated that she recognized her issues with alcohol use. (Answer to SOR)

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<sup>1</sup>The SOR Answer signed by Applicant on 12/17/15, swore that "she was abstaining permanently from alcohol use, and volunteered for random urinalysis testing.

In 2007, Applicant left her college town and moved to another state where she had family. A period of five years passed, and Applicant did not have another incident with drinking and driving. (Tr. 28) She was gainfully employed.

In October 2012, Applicant was arrested and charged with (1) felony hit and run, personal injury, (2) driving while under the influence of alcohol, and (3) refusal to take a breath test. The court found Applicant guilty of driving while intoxicated. She was sentenced to 180 days incarceration, with 170 days suspended. The court ordered a fine of \$1,500, with \$1,000 suspended, fees of \$806, and further ordered that her driver's license be suspended for 12 months. She was also ordered to enter and complete the alcohol awareness program (ASAP) program. (AX C) On her own, she sought out counseling. (Tr. 31) She reported the incident to her facility security officer (FSO). (Tr. 53)

Applicant's explanation included the fact that it was an "incredibly stressful year" and that she was required to travel for work every two weeks. (Tr. 29) When she disclosed the incident on her current security clearance application, she stated that she was looking down for her phone and she misjudged the distance between her car and the one in front of her. (GX 1) She explained that she tapped his bumper and she exited her car. She reported that the man was very agitated and began yelling at her. They exchanged insurance information. The man wanted a police report as there was a scrape on his bumper. (GX 1) Applicant agreed that they call the police, but they wanted to move their cars out of the middle of an intersection. (Tr. 29) In her answer to the SOR, Applicant stated that the man got back into his car and left the area. She parked her car on the side street, and she waited for about 20-30 minutes. According to Applicant, the police did not report nor could she find the man in the car. She was near her apartment complex and decided to park in the complex garage. Applicant reports that the police came to her apartment and she denied initially that she had been drinking. She admitted that she had wine at dinner. She refused a breath test and a field sobriety test.

Applicant does not recall if she had any alcohol evaluations or counseling after the first three alcohol driving incidents. After the 2012 conviction, she was referred for an alcohol evaluation and followup treatment. On November 5, 2012, upon the advice of an attorney, she presented for a substance abuse evaluation. (AX A)

A substance abuse and treatment report, dated February 5, 2013 by a licensed professional counselor (LPC), notes that Applicant started drinking at the age of 19 in college. After turning 21, Applicant's alcohol use increased to three or four drinks about two or three times monthly. Applicant abstained from drinking for one year after the 1998 alcohol incident. Applicant acknowledged that she resumed drinking after that period of time. The report also states that Applicant abstained from drinking after the 2004 alcohol charge for about eight months and completed educational classes and counseling. (AX A)

The February 5, 2013 report section noting clinical impressions and recommendations noted that Applicant did not meet the DSM-IV criteria for any

diagnosis. It went on to say that “however, it was of clinical concern that Applicant had two previous alcohol-related driving offenses, and recommended that Applicant remain abstinent and complete an outpatient treatment plan”. Applicant successfully complete the treatment plan. Applicant reported abstinence with no difficulty since the offense in October 2012 (at that time four months ago).

Applicant, at the suggestion of her current attorney, contacted a licensed clinical psychologist (Dr.M) in December 2015 for a mental health-substance abuse evaluation. The report, dated December 8, 2015, states that Applicant did so as part of her response to a notice of possible loss of her security clearance. (AX A) Dr. M. interviewed Applicant on two separate days in December.<sup>2</sup> Dr. M. considered his two interviews, review of the case and presented his opinions and recommendations for Applicant. He noted that Applicant was forthcoming during the interviews, is taking the situation seriously, and is concerned about her job. She reported the facts about the latest 2012 alcohol incident as consistent with her other evaluation interview in 2012. Applicant reported stable employment and a promotion. She is taking steps to focus on her career, change her environment, and receive family support.

Dr. M’s report noted that Applicant was abstinent since receiving her notice of a security clearance issue, except for a Thanksgiving dinner with her family. Applicant was candid when she revealed to Dr. M. that she had wine with her family and prior to the notice from DOD, she reported drinking two to three times per week, somewhere between two and four drinks. Dr. M. gave Applicant the screening test for alcohol problems, resulting in three out of four positive indicators of difficulties. He noted that Applicant was in an inpatient treatment program for alcohol dependence after the 2004 alcohol incident. “She remained abstinent for about six months after that time. Applicant attended counseling in 2012 and group therapy and the LCP at the time noted that Applicant’s insight was improving.” She also participated in AA. From 2004 until 2012 there were no issues involving alcohol reported. She was progressing in her career. (AX A) She noted that she was very proud of her job, and does not want to lose it. She went on to say “abstinence is the only way.” She went on to admit that counseling was not enough. “Without abstinence I don’t see how there is going to be a level of trust by DOD.” She stated she was always willing to undergo random urinalysis.

Dr. M. indicated in his December 2015 report that Applicant’s family is aware and valued supportive system. Applicant was engaged, but the relationship recently ended. She was divorced in 2006. In summary, Dr. M. stated in the report that it would appear that Applicant has an alcohol use disorder. “She is now beginning to abstain, which is a first step on the road to a fuller recovery.” Dr. M. reinforced Applicant’s belief that due to stress about possibly losing her job, that abstinence is the only option for her both personally and in terms of a plan to re-establish a level of trust regarding the security clearance for her work.” Dr. M. recommended AA, a course of regular counseling, and a sponsor. (AX A)

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<sup>2</sup>Dr. M’ s credentials include 38 years of clinical work in substance abuse largely with young adults. He is the director of a counseling center, a professor in a college department of psychiatry, and his own private practice.

Finally, Dr. M. reported that, with vigilance, abstaining from all alcohol use, with a support network, Applicant could establish credibility for her security clearance. He noted that she has a great respect for having a security clearance. (AX A)

Applicant followed Dr. M's recommendation for therapy and counseling. She had an initial intake in January 2016 and attended weekly individual therapy sessions. In a February 29, 2016 report, written by a CSAC, Applicant was described as having gained insight into her decision making skills, specifically the use of alcohol as a coping mechanism. She expressed great regret for the alcohol incidents. This abuse counselor stated in the report letter that Applicant does meet diagnostic criteria under the DSM-IV for Alcohol Use Disorder, in early remission. The counselor stated that "continued work in therapy and continued abstinence indicate a positive prognosis." (AX A)

In a February 6, 2017 letter from the same CSAC, the counselor repeated the same information about Applicant's participation in therapy and insights into her behavior. She again noted that Applicant meets the DSM-5 diagnostic criteria of an Alcohol Use Disorder. Applicant noted that she would subject herself to on-going scrutiny to further reinforce a positive diagnosis. However, she did not state that she would refrain from drinking alcohol. (AX A)

At the hearing, Applicant expressed her remorse, love of work, support system and sense of rehabilitation. She is active in her community and on the Homeowner's Board. (Tr.40) She purchased a home and has many activities. (Tr. 41) She has continued family support. Also at the hearing, Applicant was candid when asked about her current use of alcohol. She stated that she is not currently abstaining from alcohol use. She drinks socially with friends. She may have a drink at home or on weekend with friends. (Tr.44) She may drink two or three glasses of wine. She noted that despite the counseling and recommendations for abstinence from alcohol, she feels that she is in control and if there is a social event she will drink. (Tr. 45) She acknowledged that she abstained from using alcohol after each incident for a period of time. (Tr. 46) For the last incident in 2012, she abstained for the court-ordered period of time.

Applicant was clear that she has since evaluated things. She has made an investment in regular personal counseling. (Tr. 46) She continues the counseling. Applicant denied that her current counselor advised her to abstain from drinking alcohol. (Tr. 47) After looking at the various letters and reports, Applicant agreed that she had been advised to abstain from drinking alcohol. However, she went on to clearly explain that after self-reflection, she feels that she is in control of that use. (Tr. 51) She does not want that issue to affect her career. She reluctantly agreed that in her investigative interview, she told the investigator that she planned to abstain from drinking alcohol. (Tr. 53) She stated that everyone knows that she drinks and associates with people who drink regularly; i.e, with colleagues after work. (Tr. 56) She does not consider herself alcohol dependent. (Tr. 54) She has had no further arrests since 2012.

Applicant does not believe she has a problem with alcohol, and she does not drink and drive. She does believe that she used to rely on alcohol when stressed. She

reflected on the advice about abstinence, but responded when questioned that she enjoys socializing and having a glass of wine. (Tr. 60) She attributes the three earlier alcohol incidents to living in a college town and an active social life. (Tr. 61) She stated that the 2004 DUI changed her and she knew that was not the path for her. When asked if she would abstain to keep her clearance, her response was “Yes.” But she restated that she is in control. (Tr. 64)

Applicant submitted 18 letters of recommendation. She received letters of appreciation from her employer. Each letter attests to her character, dedication, and strong sense of integrity. Her brother praises her unwavering work ethic. Her father states that she is a capable individual. An attorney wrote that Applicant had a mistake in judgment but no criminal intent with her alcohol incidents. (AX D)

A post-hearing submission letter, dated February 10, 2017, from an SES professional who has worked with Applicant since 2007 states that Applicant maintains the character requirements needed to perform a highly sensitive and pressure oriented job. She shared her current situation and he believes that she demonstrates the responsibility and character required to hold a security clearance. (AX E)

### **Criminal Conduct**

The security concerns for alcohol consumption and criminal conduct are the same. They are cross-referenced in 2.a - that information as set forth in subparagraphs 1.a through 1.d above. Applicant admitted the allegation in 2.a

### **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>3</sup> The burden of proof is something less than a preponderance of evidence.<sup>4</sup> The ultimate burden of persuasion is on the applicant.<sup>5</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>6</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>7</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>8</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 J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.”

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

<sup>4</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

<sup>8</sup> *Id.*

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying:

- (a) a single serious crime or multiple lesser offenses;
- (b) discharge or dismissal from the Armed Forces under dishonorable conditions;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;
- (d) individual is currently on parole or probation; and
- (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant's admissions and the evidence of alcohol-related arrests and convictions from 1998 to 2012 are sufficient to raise security concerns under AG ¶¶ 31(a) and (c).

AG ¶ 32 provides four conditions that could mitigate security concerns:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

After reviewing the mitigating conditions, I find that Applicant's behavior occurred between 1998 and 2012. Despite the fact that there were two dismissal of criminal charges and five years since her latest 2012 alcohol conviction, the criminal incidents are alcohol related. Five years have elapsed since the last incident. Applicant provided information with her counseling and her success in her work. She claims that she does not drink and drive. All the criminal charges are interrelated with the alcohol consumption. The fact that Applicant still drinks casts doubt and she failed to show that, despite the passage of time, a similar incident is unlikely to recur. AG 32(d) partially applies. She has not mitigated the criminal conduct security concerns.



## **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:

(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;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(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;

(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 admits the history of alcohol-related incidents from 1998 to 2012. The record reflects that she was evaluated by a licensed clinical psychologist and certified abuse counselors. She was diagnosed with an alcohol disorder. She has been advised for a positive prognosis to abstain from alcohol. After each incident, she did abstain for a period of time. Applicant stated to an investigator that the plan was to abstain from alcohol. She values her job and her security clearance and takes that seriously. However, now Applicant states that she is in control and despite the fact that she has been consistently advised to refrain from drinking, she drinks. She stated that she does not drink and drive. However, it is troubling that she feels that despite the counseling

and advisements, she need not abstain from alcohol. She does not feel that she has a problem with alcohol.

AG ¶ 23 provides conditions that could mitigate 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 admitted her alcohol-related incidents. She was ordered several times to complete programs, but she does not attend AA. She has a support system and is in counseling. She admits that she has turned to alcohol in difficult times. Despite the numerous advisements to refrain from drinking alcohol, she has only abstained each e for limited periods of time. She agreed at one time to abstain, but she has changed her plan. She does not believe that she has an alcohol problem at this time. I have doubts about her judgment and reliability. After considering the mitigating conditions outlined in AG ¶ 17, I conclude Applicant has not mitigated the security concern under alcohol consumption.

### **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 has worked in the defense industry for many years. She has held a security clearance since 2006. She has no noted security violations. She has had accolades from her various employers. She performs exceptional work. After her youthful alcohol related incidents in 1998, 2002, and 2004, she had eight years without incident. After the 2012 conviction, she obtained substance abuse evaluations and attended counseling. She continues with individual personal counseling. Despite her concerns about her job and keeping a security clearance, Applicant has decided not to follow the advice that she has been given by several professionals to abstain from drinking alcohol. She has been given a diagnosis of alcohol disorder. Granted there were many years between the first three incidents and the 2012. However, her change of plan not to abstain from alcohol is troubling given the circumstances of the case. There have been no incidents since 2012. The criminal conduct is interrelated with the alcohol consumption security concerns. I conclude that she has not mitigated the concerns under the criminal conduct guideline or the alcohol consumption guideline. I have many doubts about her issue of control concerning the use of alcohol given the diagnoses.

Applicant has agreed to monitoring by way of random urinalysis, but believes she has no alcohol problem and everything is in control. Any doubts must be resolved in favor of national security. Applicant has not met her burden in this case under the alcohol consumption guideline or the criminal conduct guideline. Clearance is denied.

### **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 G:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT

Subparagraph 2.a:

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 a security clearance. Clearance is denied.

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NOREEN A. LYNCH  
Administrative Judge