



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case No. 15-06042  
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**Appearances**

For Government: Nicholas Temple, Esq. and Rhett Petcher, Esq., Department Counsel  
For Applicant: Richard L. Morris, Esq.

04/03/2018

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant paid the only delinquent debt listed on the statement of reasons (SOR) in 2016. Financial considerations security concerns are mitigated. He did not mitigate personal conduct security concerns related to false statements about earning a bachelor's degree in 2004. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 28, 2010, and December 9, 2014, Applicant completed and signed Questionnaires for National Security Positions (SF 86) or security clearance applications (SCA). Government Exhibits (GE) 1, 2. On March 29, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006. Hearing Exhibit (HE) 2.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under Guidelines F (financial considerations) and E (personal conduct). HE 2.

On August 29, 2016, Applicant provided a response to the SOR, and he requested a hearing. Transcript (Tr.) 9; HE 3. On November 28, 2016, Department Counsel was ready to proceed. On August 15, 2017, the case was assigned to me. On September 22, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for October 19, 2017. HE 1A. On November 1, 2017, DOHA issued the second notice of hearing, setting the hearing for November 20, 2017. HE 1B. On November 20, 2017, DOHA issued the third notice of hearing, setting the hearing for December 13, 2017. HE 1C. Applicant's hearing was held as scheduled on the third notice.

During the hearing, Department Counsel offered 18 exhibits; Applicant offered 16 exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Tr. 13-15; GE 1-18; Applicant Exhibit (AE) 1-AE 16. On December 21, 2017, DOHA received a copy of the transcript of the hearing. On February 8, 2018, the record closed. Tr. 58. No post-hearing documentation was received.

While this case was pending a decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the new Adjudicative Guidelines (AGs), which are applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs are effective on June 8, 2017. I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>1</sup>

### **Findings of Fact<sup>2</sup>**

In Applicant's SOR response, he made partial admissions to the SOR allegations in SOR ¶¶ 2.a and 2.b. HE 3. His SOR response also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is a 56-year-old logistics specialist. Tr. 6, 9. He served in the Army from 1983 to 2009 (26 years). Tr. 27, 35. In 1984, he married, and in 2010, he divorced. GE 1. In 2011, he married, and his child was born in 1989. GE 1. He retired from the Army as a master sergeant. In 2005, he deployed to Afghanistan, and in 2006, Applicant injured his back in Afghanistan. Tr. 32-33. He received 4 major back surgeries and 15 other medical procedures. Tr. 33. He held a security clearance while in the Army, and there are no allegations of security violations. Tr. 28.

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<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at [http://ogc.osd.mil/doha/5220-6\\_R20170608.pdf](http://ogc.osd.mil/doha/5220-6_R20170608.pdf).

<sup>2</sup> Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

## **Financial Considerations**

SOR ¶ 1.a alleges Applicant has a Social Security Administration (SSA) debt placed for collection for \$29,949. Around 2007 or 2008, Applicant received a briefing from a SSA representative about applying for benefits while he was receiving medical treatment for his back. Tr. 34-35. He believed he was authorized SSA benefits, and he applied for benefits. Tr. 35. He said he did not understand that SSA disability benefits are limited if someone is receiving a salary, and he was receiving his Army salary for active duty service at the same time he was receiving SSA payments. Tr. 41-42. In 2016, SSA advised Applicant of the \$29,949 debt, and in 2016, he paid it. Tr. 36, 41; AE 7; AE 8; GE 9.

Applicant provided a budget. AE 9. He has monthly gross income of \$9,000 and a monthly remainder of \$5,908 after paying his debts. AE 9. The SOR does not allege any other delinquent debts.

## **Personal Conduct**

Applicant had a total of 32 college credits from two colleges before he joined the Army in 1983. Tr. 29. While in the Army, he earned 48 additional credit hours from a college. Tr. 29.

This case involves two universities. One university is located within 500 miles of Miami, Florida (University H), and the other university is located within 300 miles of Washington D.C. (University K). The names of the two universities are similar.

Applicant said that in 2003, he provided all of his college-education documentation through the Internet to University K. Tr. 30, 46. He completed a “pre-application test online,” and he did not take any classes, generate any papers, or take any tests. Tr. 38, 46-47. In 2004, he received a bachelor’s degree in logistics management from University K. Tr. 30, 46. He said he received a transcript from the on-line university, and he assumed “at that time it was all valid.” Tr. 30. He paid \$500 for the bachelor’s degree. Tr. 39.

In 2012 or 2013, Applicant learned the university was not an accredited university. Tr. 31. SOR ¶ 2.a alleges Applicant was terminated from his employment from Company A in January 2014 because he falsified or used “for unauthorized purposes, any [c]ompany records or credentials.” Company A’s facility security officer (FSO) said Applicant needed a bachelor’s degree to be employed in his position at Company A. GE 8. Applicant told his FSO that he had a bachelor’s degree. Tr. 40. In 2014, Company A’s FSO confronted Applicant with the allegation that he provided false information about his educational background. Tr. 39-40. The FSO said Applicant told him he received a degree from a university located within 500 miles of Miami, Florida (University H), and Applicant provided a transcript that “looked real.” Tr. 40; GE 8. The FSO said that University H is a “non-traditional university and only issued diplomas based on life experience.” AE 8. At his hearing, Applicant denied that he said he went to University H, and instead claimed he told his FSO about attending University K. Tr. 40.

Applicant provided documentation from the Internet about University H that indicates University H is accredited. AE 10. On October 4, 2017, a student advisor at University H emailed Applicant and told him that he should provide \$5,000 so that University H could begin the “credit transfer process.” AE 10. University H told Applicant that the credit transfer process required submission of “documents to multiple universities,” apparently to verify completion of courses at other universities. AE 10. Department Counsel provided documentation that University H is not accredited, and in one instance, an MBA degree was purchased from University H for an animal. GE 12-GE 18.

Applicant said at the time he obtained the degree, and when he applied for employment with Company A, University K was accredited. Tr. 48. He did not save any documentation about his research concerning the accreditation of University K. Tr. 48. He said, in November 2014, that he learned from his FSO that University K was not accredited. Tr. 51. University K appears to be an institution that offers an annual course about local government, and it does not provide bachelor’s degrees. GE 10.

SOR ¶¶ 2.b and 2.c allege Applicant falsified his June 28, 2010, and December 9, 2014 SCAs in which he stated that he attended University K “from 4/2002 to 11/2004 (estimated),” and he was awarded a bachelor’s degree in November 2004. Applicant admitted he provided the information as indicated in the two SORs. Tr. 44. He said University K gave him the address within 300 miles of Washington D.C., and before his hearing, he received the address for the city where University H is located. Tr. 44. He insisted his degree was from University K, and he did not understand how University H was involved. Tr. 45.<sup>3</sup> The statement that he attended University K for two years was a “mistake,” and he regretted that he gave a false impression that he attended University K for two years. Tr. 46. At the time he listed University K in his December 9, 2014 SCA, he knew it was not an accredited university. Tr. 52.

Applicant attempted to obtain documentation from University H because he gave his documentation to an employer and lost his personal copy of the documentation he received in 2004. Tr. 32. He sent emails to University H, and he said University H refused to provide documentation unless he paid \$5,000. Tr. 32, 37; AE 12. Applicant did not attend classes at University H’s physical location. Tr. 38.

Applicant’s May 1, 2015 Office of Personnel Management (OPM) personal subject interview (PSI) indicates Applicant said he did not receive a degree from University K; however, Applicant said he told the OPM investigator that he did receive a degree from University K. Tr. 42. He said he told the OPM investigator that he did not physically attend the university. Tr. 47. Once he learned the diploma was invalid, and the school was not accredited, he lost the diploma. Tr. 48. Applicant did not provide, and the file does not contain, diplomas or transcripts from Universities H or K.

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<sup>3</sup> Applicant provided information about University H downloaded from the Internet on September 29, 2017, as an exhibit for his hearing indicating University H was accredited, and he provided a confusing explanation for his rationale for providing this information. Tr. 53-54; AE 10. Department Counsel provided documentation showing some unaccredited universities were using unreliable Internet accreditation services. GE 15-17.

Applicant's resume indicates, B.A. in Logistics Management [GPA: 3.6], University K in 2004. GE 6 at 2. Submission of a false resume was not listed in the SOR, and this allegation will not be considered for any purpose in this decision.

### **Character Evidence**

A federal government employee has known Applicant for about 10 years, and he supervised Applicant for a time. Tr. 17-19. Applicant is professional, honest, diligent, trustworthy, and reliable. Tr. 20-26. Letters from five friends or colleagues describe Applicant as honest, trustworthy, and reliable. AE 12-AE 16.

Applicant has received the following ribbons and medals: five Meritorious Service Medals (MSM), two Army Commendation Medals (ARCOM); four Army Achievement Medals (AAM); eight Army Good Conduct Medals (AGCM); and other medals and ribbons. AE 1. He completed numerous military training courses and received several certificates of achievement and letters of commendation. Tr. 28-29; AE 1; AE 3; AE 4. His reason for separation on his DD Form 214 is indicated as permanent disability. AE 1. He has excellent noncommissioned officer evaluation reports (NCOERs) and civilian performance evaluations. AE 2; AE 6.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance

decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

Failure 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 or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in

satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

One financial considerations mitigating condition under AG ¶ 20 is potentially applicable in this case: "(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts."<sup>4</sup>

The record in this case does not establish that Applicant fraudulently obtained the SSA overpayment of \$29,708. In 2016, Applicant repaid the SSA debt, and he established his good faith under AG ¶ 20(d). There are no other allegations of delinquent debts. Financial considerations security concerns are mitigated.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

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<sup>4</sup> The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities.<sup>5</sup>

The record establishes AG ¶ 16(a). Applicant falsified his June 28, 2010, and December 9, 2014 SCAs in which he stated that he attended University K “from 4/2002 to 11/2004 (estimated),” and he was awarded a bachelor’s degree in November 2004. He did not “attend” University K for two years. He did not receive a bachelor’s degree from University K. Applicant’s Company A FSO confronted him about the diploma issue, and then Applicant was fired for using a false credential (bachelor’s degree) to obtain employment.

AG ¶ 17 lists conditions that could mitigate security concerns under Guideline E:

(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 advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. 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;

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<sup>5</sup> The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant’s intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).



(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 contributed to 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 activities was unwitting, 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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

None of the mitigating conditions apply. Applicant falsified his June 28, 2010, and December 9, 2014 SCAs about attendance at University K "from 4/2002 to 11/2004 (estimated)," and award of a bachelor's degree in November 2004. He lied to his employer, Company A, about having a bachelor's degree. His falsifications are serious and not mitigated. Applicant cannot be trusted to admit embarrassing negative information even when that information is sought in a security context. Personal conduct security concerns are not mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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), "[t]he 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. My comments under Guidelines F and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 56-year-old logistics specialist. He served in the Army from 1983 to 2009. He medically retired from the Army as a master sergeant. In 2005, he deployed to Afghanistan. In 2006, Applicant injured his back in Afghanistan. He received 4 major back surgeries and 15 other medical procedures. He held a security clearance while in the Army, and there are no allegations of security violations.

Five letters and one hearing statement from Applicant's friends or colleagues describe Applicant as diligent, professional, honest, trustworthy, and reliable. He has received the following awards and medals: five MSMs, two ARCOMs; four AAMs; eight AGCMs; and other medals and ribbons. He completed numerous military and civilian training courses and received several certificates of achievement and letters of commendation. He has excellent NCOERs and civilian performance evaluations. He paid the only delinquent debt alleged on the SOR.

The evidence against mitigation of security concerns is more substantial. Applicant's falsely indicated on his SCAs in 2010 and 2014 and to his employer in 2014 that he had a bachelor's degree, when he knew that he did not have a legitimate bachelor's degree. His false statements were deliberate, improper, and made with intent to deceive. AG ¶ 15 indicates, "Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." Applicant's falsifications raise serious security concerns. The protection of national security relies on applicants to self-report conduct that jeopardizes security, even when that disclosure might damage the applicant's career. Applicant cannot be trusted to disclose potentially derogatory information related to security issues. He did not establish his reliability, trustworthiness, and ability to protect classified information.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial considerations security concerns are mitigated; however, personal conduct security concerns are not mitigated. It is not clearly consistent with the interests of national security to grant Applicant 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a, 2.b, and 2.c:	Against Applicant

### **Conclusion**

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge