



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



In the matter of: )  
 )  
----- ) ISCR Case No. 16-02495  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

05/21/2018  
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**Decision**  
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KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to revoke his eligibility for access to classified information. He presented sufficient evidence to explain, extenuate, or mitigate the security concern stemming from his problematic financial history. Accordingly, this case is decided for Applicant.

**Statement of the Case**

On December 9, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his financial circumstances raised security concerns under the financial considerations guideline.<sup>1</sup> Applicant answered the SOR on January 13, 2017, and requested a hearing to establish his eligibility for continued access to classified information.

A hearing was scheduled for April 25, 2018, a date mutually agreed to by the parties. Applicant testified at the hearing, and the exhibits offered by the Government at

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<sup>1</sup> The DOD CAF took this action under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive).

the hearing were admitted into the record without objection. (Government Exhibits (GE) 1 – 6.) Applicant offered no exhibits, but his Answer to the SOR included 12 attachments, which are already part of the record and will be cited as “Attachment [letter].” The transcript (Tr.) was received on May 4, 2018. At Applicant’s request, the record was left open until close of business May 11, 2018.<sup>2</sup> Applicant timely submitted documents I have marked as Applicant’s Exhibits (AE) AA through JJ and which are admitted without objection.

### **Procedural Issues**

On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a “single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position.”<sup>3</sup> The National Security Adjudicative Guidelines (hereinafter “new adjudicative guidelines” or “AG”), which are found in Appendix A to SEAD-4, are to be used in all security clearance cases decisions issued on or after June 8, 2017.<sup>4</sup> In light of this explicit direction (and absent lawful authority to the contrary), I have applied the new adjudicative guidelines. ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).<sup>5</sup> DOD CAF adjudicators reviewed this case using the previous version of the adjudicative guidelines, dated September 1, 2006, which were in effect at the time. My decision and formal findings under the revised Guideline F would not be different under the 2006 Guideline F.

### **Findings of Fact**

Applicant is 48 years old, married (since August 2006), with an adult daughter and an adult step-daughter. He has an Associate’s Degree and is enrolled in a Bachelor’s Degree program in Computer Security. Since April 2008, he has been employed by a defense contractor.<sup>6</sup>

The SOR alleged 20 delinquent debts totaling \$18,820 (of which six are medical debts totaling \$1,295) and a Chapter 7 bankruptcy filing in September 2010 (which was discharged in December 2010). Applicant admits four of those allegations, with explanations (SOR ¶¶ 1.j and 1.l to n.) and denies 16 of those allegations, with explanations (SOR ¶¶ 1.a through 1.i, 1.k, 1.o, and 1.q through 1.u).

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<sup>2</sup> Tr. 75.

<sup>3</sup> SEAD-4, ¶ B, *Purpose*.

<sup>4</sup> SEAD-4, ¶ C, *Applicability*.

<sup>5</sup> See also ISCR Case No. 07-00029 at 3 (App. Bd. Dec. 7, 2007) (when the guidelines were last revised, the Board stated: “Quasi-judicial adjudications must be made within the bounds of applicable law and agency policy, not without regard to them.”)

<sup>6</sup> GE 1; Tr. 6, 18-19, 45.

SOR ¶ 1.p alleges that Applicant filed for Chapter 7 protection in September 2010, which was discharged in December 2010, which Applicant admits. Applicant traces the roots of his financial problems to the death of his father, not long before Applicant filed for bankruptcy in September 2010. Before his father's death, Applicant's parents lived in a home that Applicant owned. The agreement was that Applicant's parents would make Applicant's mortgage payments in return for living in that home. When Applicant's father died suddenly, Applicant expected that his mother would continue to make the mortgage payments, because she had more than enough money to do so. She, however, refused to continue to make those payments, even though she continued to live in the home Applicant owned. Applicant could not afford to make the mortgage payments on his primary residence and the one occupied by his mother. Nor could he bring himself to evict his own mother. Ultimately, Applicant's mother moved out, but by then her home was already in foreclosure. Applicant sought legal advice and filed the Chapter 7 case in September 2010, which was discharged in December 2010. The bankruptcy discharged about \$180,000 of debt, but Applicant lost everything and had to start from scratch.<sup>7</sup>

In 2011, Applicant's wife developed serious back pain, which coupled with pain medication forced her to stop working. When she was working, she contributed about \$12,000 per year to the household. Applicant lost her income, when she could no longer work. And, not all of her medical expenses were covered by his insurance.<sup>8</sup> Applicant's spouse had a heart condition that was undiagnosed until she suffered a heart failure and had heart surgery in September 2017. Before that surgery, her condition had caused her to have two amputations and a stint put in her leg earlier in 2017.<sup>9</sup> Thus, Applicant's spouse had a medical condition from 2011 until 2017 that prevented her from working and ran up uninsured medical expenses. To aggravate Applicant's financial problems, his stepdaughter on several occasions used his identity to make purchases. She ultimately filed for bankruptcy, which made her debts uncollectable by Applicant.<sup>10</sup>

Just as Applicant was getting back on his feet financially, he developed a circulatory problem in 2013. That medical condition compelled him to relocate much closer to his place of work, to cut down on the lengthy commute, which aggravated his condition. Although the move did reduce his commute, the new residence was more expensive than the one he had left. That put a strain on finances.<sup>11</sup>

Applicant's finances are stable. He is current on his taxes. He takes home about \$4,600 per month. His and his spouse's pension funds total about \$250,000, but taking a loan from them is not an option. His checking account balance is about \$500. Applicant and his spouse have made no large purchases, and they do not take vacations. Applicant

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<sup>7</sup> Answer, pp. 1-2; Tr. 20-22.

<sup>8</sup> Tr. 22, 24, 68-69.

<sup>9</sup> Tr. 23-24

<sup>10</sup> Tr. 37-38, 44-46, 54.

<sup>11</sup> Tr. 22, 27.

estimates that his monthly remainder is about \$600, which he uses to pay down some debts. He and his spouse did take an online credit counseling course. Now that his spouse's medical issues are under control, they are looking for jobs she can do from home, since her medications prevent her from driving.<sup>12</sup>

Applicant testified about his SOR debts, beginning with SOR ¶ 1.a, an automobile loan balance of \$5,330. This debt was included in his bankruptcy, but the judge told Applicant that he would need to enter into a reaffirmation agreement with the lender if he wanted to keep the vehicle. Applicant offered the lender a reaffirmation agreement, but the lender refused. Applicant understood that if the lender refused the reaffirmation agreement, he should surrender the vehicle if he wanted the debt discharged in bankruptcy. Therefore, Applicant surrendered the vehicle to the lender.<sup>13</sup> The evidentiary record supports Applicant.<sup>14</sup> This debt has been resolved.

SOR ¶ 1.b is an automobile loan balance of \$3,221. Applicant claimed that he surrendered this vehicle to the lender, because he could not afford the payments. The dealership told him to return the vehicle to the lender, which would sell it and charge Applicant with any deficiency. Applicant surrendered the vehicle to the lender in June 2014, but he was never given an accounting by the lender or the collections agency. Without an accounting, Applicant disputes this debt.<sup>15</sup> Post-hearing, Applicant contacted the lender and learned that the current balance after the sale of the vehicle was less than \$200, which he plans to pay as soon as the lender sends him a statement of the exact amount due.<sup>16</sup> Applicant's plan resolves this debt.

SOR ¶ 1.c is for \$2,636, an amount allegedly due for move-out expenses from an apartment Applicant rented. Applicant disputed this amount, because it included the cost of cleaning or replacing the carpet in Applicant's unit after he moved out. Applicant points to documents that indicate that he rented the apartment "as is" at move-in and was told that he would not be charged with carpet cleaning or replacement at move-out. Applicant has disputed this bill, contending that the landlord improperly withheld Applicant's security deposit.<sup>17</sup>

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<sup>12</sup> Tr. 63, 67-69.

<sup>13</sup> Answer, p. 3; Tr. 24-26.

<sup>14</sup> GE 3 (does not report this debt); GE 4, Trade Line 38 (reports a charge-off and a voluntary surrender); GE 5, p. 1 (reports a charge-off and a voluntary repossession); GE 6, p. 6 (reports a voluntary surrender).

<sup>15</sup> Tr. 27-30; Answer, pp. 3-4.

<sup>16</sup> AE JJ.

<sup>17</sup> Tr. 35; Answer, p. 4; Attachment C, pp. 7, 15-16, 21.

SOR ¶ 1.d is a delinquent credit card with a balance of \$872. Applicant claimed that this credit card was fraudulently obtained by his stepdaughter.<sup>18</sup> In any event, the record shows that this debt was settled in April 2017.<sup>19</sup>

SOR ¶ 1.e. is a collections account with a balance of \$811. Post-hearing, Applicant submitted a letter from the collections agency stating that the account had been settled in full in January 2015.<sup>20</sup>

SOR ¶¶ 1.f and 1.g are credit card charge-offs by the same creditor of \$672 and \$607, respectively. Post-hearing, Applicant submitted documents showing the resolution of those debts.<sup>21</sup>

SOR ¶ 1.h is a medical debt for \$595. Applicant disputes this debt, because he was charged for a medical procedure that was never performed on his wife. He noted that the medical records (which he did not submit) described the patient as a woman whose physical appearance did not at all resemble his wife.<sup>22</sup>

SOR ¶ 1.i is a collections account for a credit card balance of \$500. Applicant believed that this credit card was also one opened fraudulently by his stepdaughter. Due to his stepdaughter's bankruptcy, he cannot collect this debt from her.<sup>23</sup>

SOR ¶ 1.j is a medical debt for \$295. Applicant admitted this debt and negotiated a settlement with the provider for \$150. Applicant sent a check for that amount to the provider, but the provider returned the check with a letter explaining that since he assumed the medical practice he could not legally accept the payment.<sup>24</sup> This debt has been resolved.

SOR ¶ 1.k is a wireless service debt for \$225. This is another instance where his stepdaughter used Applicant's information to open this account. This account has been paid.<sup>25</sup>

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<sup>18</sup> Tr. 37-38; Answer, p. 5; Attachment I (letter from Applicant's daughter admitting credit card debt of \$1,000).

<sup>19</sup> GE 3, Trade Line 39 (account paid for less than full balance). The most recent credit report before that showed the account was paid as agreed. GE 4, Trade Line 29.

<sup>20</sup> AE HH.

<sup>21</sup> AE FF.

<sup>22</sup> Tr. 41-44; Answer, pp. 5-6.

<sup>23</sup> Tr. 44-46; Answer, p. 6; Attachment I.

<sup>24</sup> Tr. 46-47; Answer, pp. 6-7; Attachment J (provider's letter and returned check).

<sup>25</sup> Tr. 47-49; Answer, p. 7; Attachment K; AE EE.

SOR ¶ 1.l is alleged as a medical debt for \$160. Applicant, however, corrected the record to show that it was in fact a speeding ticket. Applicant is under a payment plan but produced no documentation of that plan or plan payments.<sup>26</sup>

SOR ¶ 1.m is a medical debt for \$142. Applicant admitted this debt, and it is on the list to be paid.<sup>27</sup>

SOR ¶¶ 1.n and 1.o are medical debts for \$52 and \$51, respectively. Applicant testified that these were duplicates and that the debt was paid in January 2017.<sup>28</sup>

SOR ¶ 1.q is a collections account for a cable service balance of \$400. Applicant denied that he ever subscribed to that service. Applicant submitted no documents supporting his denial.<sup>29</sup>

SOR ¶ 1.r is a collections account for a cable service balance of \$360. Applicant testified that this bill was due to equipment that the service claimed was never returned. But Applicant contended that he followed the instructions and put it on his porch to be picked up by that service. He does not know whether the provider never received the equipment or did and billed him anyway. Applicant has no documents to support his denial.<sup>30</sup>

SOR ¶ 1.s is for a traffic ticket in the amount of \$122. That debt was paid in 2017.<sup>31</sup>

SOR ¶ 1.t is collections account for \$93 placed by an auto insurance policy that Applicant's stepdaughter took out. Applicant paid that debt in December 2016.<sup>32</sup>

SOR ¶ 1.u is for an apartment move-out fee of \$1,676. Applicant knew there would be some money owed, but he was never sent a final bill. He contacted the management, which could not verify that Applicant owed any deficiency, because that management had just purchased that rental property. The new management cited advice of counsel as the reason why they could not put in writing that there was no deficiency.<sup>33</sup> Post-hearing,

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<sup>26</sup> Tr. 49-51; Answer, p. 7.

<sup>27</sup> Answer, p. 7.

<sup>28</sup> Tr. 51; Answer, pp. 7-8; Attachment O; AE DD.

<sup>29</sup> Tr. 51-52. See Answer, p. 9.

<sup>30</sup> Tr. 52-53; Answer, pp. 9-10.

<sup>31</sup> Tr. 53-54; Answer p. 10; Attachment S.

<sup>32</sup> Tr. 54; Answer, p. 10; Attachment T.

<sup>33</sup> Tr. 54-56.

Applicant provided a document from current management showing that Applicant had no balance owed to the prior management or to the current management.<sup>34</sup>

During cross-examination, Department Counsel pointed out that the most recent credit report showed that Applicant is somewhat behind on some credit cards. Applicant agreed that he was behind in light of the medical issues he had been dealing with in 2017. The credit report also showed the Applicant had made payments on a couple of those credit cards in February and March 2018.<sup>35</sup> Post-hearing, Applicant provided a document showing that two of those accounts (with the same creditor) were under a payment plan requiring little or no minimum payments and would incur no interest or fees.<sup>36</sup> On another of those accounts, Applicant made a payment in March 2018, and post-hearing Applicant provided a document from that creditor that he was now current.<sup>37</sup>

In sum, Applicant established that he has resolved 15 of the 20 SOR debts. Three of the five unresolved debts are medical accounts at SOR ¶¶ 1.h, 1.i, and 1.m totaling \$897. The two unresolved non-medical debts are SOR ¶¶ 1.q and 1.r totaling \$760. The 15 resolved debts total \$17,163.

### **Law and Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individuals are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2; SEAD-4, ¶ E.4.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. SEAD-4, Appendix A, ¶¶ 2(c), 2(d).

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

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<sup>34</sup> AE II.

<sup>35</sup> Tr. 62-63; GE 3, Trade Lines 28, 31, 35, and 36 (total past due of \$819). These past due amounts were not alleged in the SOR.

<sup>36</sup> AE GG involving Trade Lines 28 and 36.

<sup>37</sup> AE BB (dated April 22, 2018) involving Trade Line 35.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant's eligibility, "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." SEAD-4, Appendix A, ¶ 2(b). See *also* SEAD-4, ¶ E.4. Moreover, the Supreme Court has held that officials making "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## **Discussion**

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

The SOR alleges that Applicant has a number of delinquent debts, which purportedly raise a security concern under Guideline F. The financial considerations security concern is explained at AG ¶ 18, which in pertinent part, states:

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence.

Guideline F is not limited to a consideration of whether a person with financial issues might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances giving rise to delinquent debt and other security-significant financial issues cast doubt upon a person's self-control, judgment, and other qualities essential to protecting classified information.<sup>38</sup>

In assessing Applicant's case, I considered the following pertinent disqualifying and mitigating conditions:

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<sup>38</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).



AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations;

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;

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

A security clearance adjudication is not a debt-collection process. Rather, an administrative judge examines the way an applicant handles his or her personal financial obligations to assess how they may handle their security obligations.<sup>39</sup> Here, Applicant's security clearance eligibility was called into question by his past and continuing financial problems. I conclude that disqualifying conditions AG ¶¶ 19(a) and (c) apply. The next inquiry is whether any mitigating conditions apply.

Under a longstanding family agreement, Applicant had allowed his parents to live in a home owned by Applicant in return for his parents making the mortgage payment on the home. Applicant's father, however, unexpectedly passed away. For reasons known only to her, Applicant's mother refused to continue making the mortgage payments, even though she had the financial means to do so. And, she still lived in the home. Being stuck with mortgage payments for his own home and the mortgage payments for his mother's home, Applicant managed for only a short period of time. At some point in 2010, he sought legal counsel and as a result filed for Chapter 7 protection in September 2010, which was discharged in December 2010. The indebtedness was caused by his father's sudden

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<sup>39</sup> See *generally* ISCR Case No. ISCR Case No. 12-09719 at 2-3 (App. Bd. Apr. 6, 2016).

death and his mother's inexplicable refusal to continue making the mortgage payments for the home she occupied, circumstances largely, if not solely, beyond Applicant's control. Faced with indebtedness caused by those circumstances, Applicant sought legal counsel and as a result filed for Chapter 7 protection. That was a responsible reaction to his adverse financial circumstances. AG ¶ 20(b) applies.

Applicant's delinquent debts are neither infrequent, nor did they happen so long ago. A number of his debts were delinquent when the SOR was issued and some were apparently delinquent just before the hearing. AG ¶ 20(a) does not apply.

The evidence of Applicant's and his wife's serious medical problems is abundant. The nexus between those problems and Applicant's financial problems is also clear. The circumstances that caused his financial problems were largely beyond his control. Applicant has for the most part resolved his debts by payment, settlement, or has documented that he does not owe the debts alleged. In other cases, he has asserted a reasonable basis to dispute the debts. He has acted responsibly in the face of those adverse circumstances. AG ¶¶ 20 (b), (c), (d), and (e) apply to the debts Applicant has resolved.<sup>40</sup>

Applicant failed to resolve three medical debts totaling \$897. I have given little weight to those debts. Medical debt is unlike other type of debt. First, it is presumed that medical debt is incurred for necessary medical care and treatment as opposed to frivolous, irresponsible spending, or otherwise living beyond one's means. Second, medical debt is usually unplanned, unexpected, and nondiscretionary. Third, it can add hundreds if not thousands of dollars in debt in a short period, which can be overwhelming for a debtor. In my view, having less than \$1,000 in unresolved medical debts does not fatally undermine Applicant's suitability. Accordingly, the allegations in SOR¶¶ 1.h, 1.i, and 1.m are decided for Applicant.<sup>41</sup>

The record does not raise doubts about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.<sup>42</sup> Accordingly, I conclude that Applicant met his ultimate burden of persuasion

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<sup>40</sup> Applicant and his wife completed an online credit counseling course.

<sup>41</sup> The two unresolved non-medical debts totaling \$760 are *de minimis* and do not raise security concerns. Therefore, SOR ¶¶ 1.q and 1.r are decided for Applicant. I have also considered the unalleged, recently incurred past due credit card balances totaling \$819. See, e.g., ISCR Case No. 14-01941 at 3 (Mar. 30, 2015) (unalleged financial conduct may be considered in assessing credibility, mitigation, and in the whole-person analysis). Those balances were incurred at a time when Applicant was still dealing with the financial impact of medical issues he faced in 2017. In addition, the record shows that two of the three accounts are under a payment plan. A third is now current due to a payment Applicant made in March 2018. The fourth account has a past due balance of \$153. That unresolved past due balance is *de minimis* and does not undermine Applicant's credibility.

<sup>42</sup> AG ¶ 2(a)(1)-(9).

to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the Amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F (Financial Considerations):      For Applicant

Subparagraphs 1.a-1.u:      For Applicant

### **Conclusion**

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas  
Administrative Judge