



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



In the matter of: )  
)  
) ISCR Case No. 16-03546  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mary M. Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

12/04/2017  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 28, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The action was taken under Executive Order (EO) 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 June 8, 2017, new AG were implemented and are effective for decisions issued after that date.<sup>1</sup>

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<sup>1</sup> I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on January 20, 2017, and April 4, 2017, and requested a hearing before an administrative judge. The case was assigned to me on July 25, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 21, 2017. I convened the hearing as scheduled on September 21, 2017. The Government offered exhibits (GE) 1 through 7. Applicant testified and did not offer any exhibits. There were no objections to GE 1 through 7 and all were admitted into evidence. Hearing Exhibit I is a demonstrative chart. DOHA received the hearing transcript on October 3, 2017.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.e and 1.g. He denied the remaining SOR allegations. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old. He earned two bachelor's degrees in 2004 and later attended graduate school, taking courses for his master's degree. He has never been married. He has two children ages seven and eight years old. He has worked for his current employer since 2006. For a five month-period during this time, he worked for a different employer. He has no periods of unemployment since graduating from college.<sup>2</sup>

Applicant attributed his financial issues to a period when he was cohabitating with his children's mother. He purchased a house in 2008. In 2010, water pipes burst under the home and his water bill increased. During this time, his child was born. He moved his family from the house into an apartment. He fell behind on mortgage payments and his car loan. His car was repossessed (SOR ¶ 1.e-\$3,821). His house was foreclosed in October 2010 (SOR ¶ 1.g).<sup>3</sup>

Applicant disputed the debt in SOR ¶ 1.a (\$696). This debt is for a cell phone plan. Applicant purchased phones through the plan that were to be paid over two years. After one year, he changed cell phone providers. The provider no longer carried the plan he originally had. He believed the plan allowed him to return the phones within the two years and be reimbursed. He claimed he returned the cell phones and indicated the provider was to provide him with a \$696 credit. The original provider sold the debt to a collection agency and it has been subsequently resold. Applicant stated in his answer that he filed a complaint with Consumer Financial Protection Bureau (CFPB). The debt was verified by CFPB. He stated in his answer that he was currently in the process of suing both companies. Applicant testified he returned the phones, so he continues to dispute the debt with the original collection agency and its successors. It remains unresolved in a collection status on his credit reports.<sup>4</sup>

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<sup>2</sup> Tr. 19-25; GE 1.

<sup>3</sup> Tr. 26-29, 50.

<sup>4</sup> Tr. 53-57; GE 3, 4; Answer to SOR at pages 13, 17, 21, 120, 139, 166.

Applicant testified that he moved from his apartment in 2014. In his SOR answer he stated he moved out in July 2011. He received a notice that he owed additional money (SOR ¶ 1.b-\$217). He disputed this debt with the property manager and the collection agency. He stated in his answer that he filed a complaint with the CFCB and was suing the debt collector for violations. CFCB verified the debt, but Applicant does not believe the amount owed is accurate. The creditor offered to settle the debt for \$108. Applicant testified that he is not sure why the debt remains because he had a security deposit with the apartment. He testified he is still disputing the debt. He then admitted the debt. He has not paid the debt or the settlement, but testified that he is able to pay it. He stated he could arrange to pay it. He provided no additional evidence regarding the resolution of the debt. It remains in collection status on his credit reports.<sup>5</sup>

Applicant admitted the debt alleged in SOR ¶ 1.e regarding his repossessed vehicle. He testified that the debt was sold to a collection agency. In his answer to the SOR, he stated that he never received notice from the original creditor that would have likely been sent to his previous address. In 2014, he received notice from a debt collector. He stated the debt collector sent him false documents with his name forged. He filed a complaint with the CFCB and his state's attorney general's office. He stated in his answer that he is currently suing the debt collector. At his hearing, he testified he has not made any attempts to make any payments to the original creditor. He is disputing he owes the collection agency. He never made any payments after his vehicle was repossessed. He does not want to pay the incorrect collection agency. He does not have the means to pay this debt. He further testified that he does not dispute owing the debt, but disputes the authenticity of the collection agency.

Documents provided as part of Applicant's answer to the SOR include the investigation of the debt by CPFBI, which state that the collection agency sent Applicant a notice in June 2014 after it purchased the debt and made 15 attempts to contact him. The collection agency sent a validation letter in June 2014, and there was no response from Applicant. In February 2015, Applicant sent the collection agency a demand letter indicating it had five days to provide documentation regarding his account. If it failed to comply it should remit \$1,000 to Applicant for "willful violation of 15".<sup>6</sup> The collection agency immediately sent Applicant a Dispute Validation letter that provided him with information if he suspected he was the victim of fraud or identity theft. The letter was returned. The collection agency attempted again to provide Applicant with the information he requested. No additional information was provided by Applicant to show he has resolved the debt. It remains in collection status on his credit reports.<sup>7</sup>

Applicant disputes the debt for cable service alleged in SOR ¶1.f (\$144). He testified that he had service with this creditor for 48 hours and then switched services. He

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<sup>5</sup> Tr. 57-67; GE 4; Answer to SOR at pages 28-32, 121, 139.

<sup>6</sup> Tr. 67-72; GE 3, 6; Answer to SOR at pages 42-47, 121, 139. It is unknown what "willful violation of 15" means.

<sup>7</sup> Tr. 67-72; GE 3, 6; Answer to SOR at pages 42-47, 121,139.

believed he had 30 days to cancel service, and he returned the cable equipment. In Applicant's answer to the SOR, he stated he canceled service within 24 hours. The charges are for equipment, which he stated he returned. It is no longer on his most current credit reports. This debt is resolved.<sup>8</sup>

Applicant's college was funded by his father, as part of an agreement for delinquent child support. Applicant also acquired student loans for college. These student loans are listed as individual accounts in Applicant's credit reports. At some point in time after Applicant's deferments on his student loans expired prior to around 2010, they became delinquent and later were garnished. He was concerned because he did not recognize the entities that were garnishing his pay, so he filed a report of identity theft. Eventually, one creditor ceased the garnishment, and he was reimbursed the amount taken. Other amounts garnished were applied to his student loans. The garnishment stopped in 2015. There was additional confusion because apparently Applicant's father also obtained student loans that may have been held jointly. His father was unable to make the payments. Applicant also paid some student loans that were resolved in 2009.<sup>9</sup>

Due to unforeseen financial problems in 2010, Applicant was unable to pay his student loans alleged in the SOR. He testified that he contacted the creditors in SOR ¶¶ 1.c and 1.d in about 2011, but has not contacted them since then and since the garnishment ceased in 2015. He has not done anything to resolve these delinquent student loans. He separated from his children's mother in February 2016. Due to his child support payments, he stated it is difficult to pay his bills. He explained he is unable to make payments. These debts are unresolved. Applicant has not participated in financial counseling and does not have a budget.<sup>10</sup>

Applicant denied he intentionally failed to disclose on his September 2015 security clearance application (SCA) that in the past seven years he had any possessions or property voluntarily or involuntarily repossessed or foreclosed or that he had defaulted on any type of loan or had bills or debts turned over to a collection agency or had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed. He also denied he intentionally failed to disclose that his wages were garnished.

Applicant testified that he did not intentionally omit anything on his 2015 SCA. He was not sure why he selected the wrong answers on his 2015 SCA, but insisted it was not intentional. He testified he disclosed the information when a government investigator questioned him in April 2016, subsequent to the submission of his 2015 SCA.<sup>11</sup>

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<sup>8</sup> Tr. 72-74; GE 3; Answer to SOR at page 121.

<sup>9</sup> Tr. 30-47; GE 3, 6.

<sup>10</sup> Tr. 37-47.

<sup>11</sup> Tr. 75-97.

Applicant testified that his failure to disclose information was due to an oversight and because he had disputes with various creditors.<sup>12</sup>

In Applicant's July 2010 SCA, under Section 26, which asked about his finances, he responded "yes" to the following inquiries: Have you had bills or debts turned over to a collection agency; Have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; Have you been 180 days delinquent on any debt; Are you currently over 90 days delinquent on any debt; and Are you currently delinquent on any Federal debt. He disclosed an \$800 credit card debt, stating the creditor did not honor a settlement agreement, so the debt may be listed as not paid. He disclosed \$80,000 of student loans from various creditors. He stated "Due to economic hardships going on in the world right now I am unable to make these payments."<sup>13</sup> In addition, he disclosed a cell phone bill for \$2,300 and a debt to the Internal Revenue Service for taxes incurred when he withdrew money from a 401k pension plan. He stated he was arranging a payment plan with the IRS.<sup>14</sup>

Applicant testified that the foreclosure on his house occurred after he completed the July 2010 SCA. It was not disclosed on his 2015 SCA. Applicant disclosed on his 2010 SCA that he had delinquent student loans. The loans in SOR ¶¶ 1.c and 1.d were delinquent when he completed his 2015 SCA. Other student loans were garnished from approximately 2010 to 2015. He was aware he had not contacted the creditors in SOR ¶¶ 1.c or 1.d since 2011, and testified he was unable to pay these loans. These were not disclosed on his 2015 SCA. He testified that he has financial problems, but did not know who the debt collectors were at the time and did not know who to pay. He further testified that he was confused about how debt collectors worked. He stated he knows he owes debts and he discussed it with the investigators. He was not going to pay any creditor until he found out whom he owed. He stated he was upfront with the investigator about his financial problems.<sup>15</sup>

In Applicant's answer to the SOR, he explained that in 2010 he disclosed to the government investigator that his home was foreclosed, his car repossessed, and his wages were garnished. He then explained in his SOR answer that he told the investigator in 2015 that he answered the SCA questions incorrectly because he "may have mistakenly answered those 2 questions wrong based on the wording of those questions."<sup>16</sup> He explained:

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<sup>12</sup> Tr. 77-97.

<sup>13</sup> GE 5 at 57.

<sup>14</sup> Tr. 49. The debts disclosed on Applicant's 2010 SCA or any other derogatory information will not be considered for disqualifying purposes, but may be considered when making a credibility determination, in the application of mitigation, and in a whole-person analysis.

<sup>15</sup> Tr. 29.

<sup>16</sup> Answer to SOR.

Other than previously listed, have any of the following happened to you. This could be interpreted to mean what I previously have disclosed to the agent in 2010 where I informed him that I had been garnished for student loans, had my car repossessed, and I was having my home foreclosed on all, at around the same time.<sup>17</sup>

Applicant acknowledged in his answer that the accounts alleged in SOR ¶¶ 1.a and 1.b were listed on his current credit reports as in a collection status. He stated, "I will have those debt collectors removed from my credit reports in the near future due to violations of Public Law 95-109, 95<sup>th</sup> Congress and Public Law 93-579." He also indicated he had claims filed against these creditors with CFPB.<sup>18</sup>

I find Applicant did disclose on his 2010 SCA that he had a vehicle repossessed, which may be why he did not include it on his 2015 SCA. Because his home had not yet been foreclosed when he completed the 2010 application, it was not disclosed at that time. It was also not disclosed on his 2015 SCA, which he had a responsibility to include. Applicant may have been confused about the wording of the questions because he had previously disclosed some information on his 2010 SCA. However, there was new information that he failed to disclose, such as his wages being garnished from 2010 to 2015, his remaining delinquent student loans owed, and the delinquent debt remaining on his repossessed vehicle. Applicant was aware of the collection status of the other debts. The fact that he was filing claims with the CFPB or was disputing certain debts did not absolve him of disclosing his financial problems. His 2015 SCA was void of any new derogatory information he was required to disclose. Applicant had several financial problems, but failed to disclose any of them in his 2015 SCA, as was required. I did not find his testimony or explanations credible. I find Applicant deliberately failed to disclose financial information as was required.<sup>19</sup>

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c),

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<sup>17</sup> Answer to SOR.

<sup>18</sup> Tr. 77-97.

<sup>19</sup> In Applicant's answer to the SOR, he stated that he told the 2010 investigator about his financial problems. I was not privy to any document to corroborate his statements.

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 national security eligibility will be resolved in favor of the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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, and has the ultimate burden of persuasion as to obtaining 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has had financial problems since 2010 when his house was foreclosed. He has delinquent debts, which began in at least 2010. Applicant is unwilling or unable to satisfy his debts. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.



Applicant's debts are recent. He testified he is unable to pay his student loans. Insufficient evidence was provided to conclude at this time that future financial problems are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to a period in 2010 when he had damage to his house and moved. His house was foreclosed, he was unable to make his car payments and the vehicle was repossessed. He also had issues with a wrongful garnishment. He and his cohabitant separated in 2016, and he now pays child support. These are conditions that were beyond Applicant's control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant testified that he is unable to pay the delinquent loans in SOR ¶¶ 1.c and 1.d. He has not contacted the creditor since 2011. He does not dispute he owes the debt in SOR ¶ 1.e, but does not have the means to pay it. I am unable to find Applicant has acted responsibly. AG ¶ 20(b) partially applies.

Applicant has not participated in financial counseling. He does not have a budget. He is unable or unwilling to pay the debts he admits he owes. There are not clear indications that his financial problems are under control. AG ¶ 20(c) does not apply. There is insufficient evidence to conclude Applicant has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) does not apply.

Applicant continues to dispute some debts that were subsequently verified. He indicated he was suing some of the creditors and collection agencies. He provided evidence in his answer that he has filed claims to verify some debts. The debts in SOR ¶¶ 1.c, 1.d, and 1.e are substantiated and verified. Applicant admitted he is unable to pay them. The debt in SOR ¶ 1.a was verified and remains in a collection status. Applicant continues to dispute it. I do not believe the amount owed is significant to rise to a level of creating a security concern. It is resolved in his favor. Applicant disputed the debt in SOR ¶ 1.b, indicating his security deposit should have covered the debt, but he never followed up with the creditor on this matter. It also is an insignificant amount and is resolved in his favor. AG ¶ 20(e) applies to these debts and to SOR ¶ 1.f as it is no longer on Applicant's credit report.

#### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

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

Applicant's house was foreclosed in October 2010, he had delinquent student loans, a repossessed vehicle, other delinquent debts and his wages were garnished. He did not disclose any of this information on his 2015 SCA. His explanations that he made an innocent mistake due to confusion because he had previously disclosed some of it to an investigator during his interview in 2010 was not credible. He did not disclose any derogatory financial information in his 2015 SCA. I find that Applicant's omissions on his SCA were deliberate.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

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

(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; and

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

There is no evidence that Applicant made a good-faith effort to correct the omission before he was confronted with the facts by the investigator. I find AG ¶ 17(a) does not apply. His deliberate failure to disclose his financial problems is not minor and casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 17(c) does not apply. There is insufficient evidence to raise AG ¶ 17(d).

### **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), 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and F 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 37 years old. He is single and has two children. He has been steadily employed since 2006. He disclosed financial problems on his 2010 SCA. In 2010, there were matters that affected his finances that were beyond his control. He indicated he is unable to pay his student loans and vehicle repossession debt that were alleged. Applicant does not have a plan for resolving his debts or a reliable financial track record. His deliberate failure to disclose any financial problems in his 2015 SCA is a serious concern. Although there is some mitigation, it is insufficient to overcome the security concerns raised by his finances and his personal conduct. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations and Guideline E, personal conduct.

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Subparagraphs 1.c-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a-2.c:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge