



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-03156

**Appearances**

For Government: Gina Marine, Esquire, Department Counsel  
For Applicant: *Pro se*

01/16/2015

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations and personal conduct. Eligibility for a security clearance and access to classified information is granted.

**Statement of the Case**

On March 5, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application.<sup>1</sup> On July 31, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility – Division A (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective

<sup>1</sup> GE 1 (e-QIP, dated March 5, 2014).

September 1, 2006. The SOR alleged security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct) and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on August 12, 2014. In a sworn statement, dated August 27, 2014, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.<sup>2</sup> On September 23, 2014, pursuant to Directive ¶ E3.1.7., Department Counsel requested a hearing.<sup>3</sup> Department Counsel indicated the Government was prepared to proceed on November 6, 2014. The case was assigned to me on November 14, 2014. A Notice of Hearing was issued on December 2, 2014, and I convened the hearing as scheduled on December 17, 2014.

During the hearing, Department Counsel moved to amend SOR ¶ 1.j. by deleting the amount \$1,500 and substituting therefor the amount \$15. There being no objection by Applicant, the motion was granted, and SOR ¶ 1.j. was amended.<sup>4</sup> Also during the hearing, four Government exhibits (GE 1 through GE 4) and nine Applicant Exhibits (AE A through AE I) were admitted into evidence. GE 3 was admitted into evidence over Applicant's objection.<sup>5</sup> Applicant and one witness testified. The transcript (Tr.) was received on January 5, 2015. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted additional documents which were marked as AE J through AE L and admitted into evidence without objection. The record closed on January 14, 2015.

### **Findings of Fact**

In his Answer to the SOR, Applicant denied all of the factual allegations pertaining to financial considerations and personal conduct (¶¶ 1.a. through 1.j., and 2.a.). After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is a 53-year-old employee of a defense contractor. He has worked for his employer as an electronics technician since March 2006.<sup>6</sup> He is a May 1980 high school graduate.<sup>7</sup> Applicant enlisted in the U.S. Air Force in August 1981, and he served on active duty until he was honorably discharged in April 1991. He subsequently served with the Air Force Reserve from May 1994 until he was again honorably

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<sup>2</sup> Applicant's Answer to the SOR, dated August 27, 2014.

<sup>3</sup> Joint Exhibit I (Letter, dated September 23, 2014).

<sup>4</sup> Tr. at 61.

<sup>5</sup> Tr. at 25.

<sup>6</sup> GE 1, *supra* note 1, at 9.

<sup>7</sup> GE 2 (Personal Subject Interview, dated April 1, 2014), at 2.

discharged in May 2000.<sup>8</sup> He has held a secret security clearance since 2004.<sup>9</sup> Applicant was married to his first wife in July 1981, and they divorced in June 1984; to his second wife in February 1990, and they divorced in April 1995; and to his current wife in May 2006.<sup>10</sup> Applicant has two children: a son born in 1982, and a daughter born in 1983.<sup>11</sup>

## Financial Considerations

The SOR identified ten delinquent debts that had been placed for collection, as reflected by a March 2014 Experian credit report.<sup>12</sup> Those ten debts, including two child-support accounts, seven medical accounts, and one library account, totaled approximately \$151,736 (reduced by the amended SOR to \$150,251). Applicant obtained a newer Experian credit report in April 2014<sup>13</sup> that identified six individuals with the same or similar names who resided at various different addresses in seven different states.<sup>14</sup> He disputed the medical accounts for several reasons: the names of the debtors reflected in the credit report differed from his, either by a different spelling of his first name, or a different middle name; the social security numbers of other individuals listed as debtors were different from his; he had never resided at the addresses identified; the medical accounts were not his because he has medical insurance for himself, his wife, and her minor children, and he had never received service from the identified medical providers.<sup>15</sup> The respective current status of the accounts, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

(SOR ¶ 1.a.): There is a medical account with a remaining and past-due balance of \$771 that was placed for collection in January 2014, as reported by Experian.<sup>16</sup>

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<sup>8</sup> GE 1, *supra* note 1, at 11-12.

<sup>9</sup> GE 1, *supra* note 1, at 31.

<sup>10</sup> GE 1, *supra* note 1, at 14-16.

<sup>11</sup> GE 1, *supra* note 1, at 19; AE C (Certificate of Live Birth, dated January 19, 1982); AE C (Certificate of Live Birth, dated September 13, 1984).

<sup>12</sup> GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated March 19, 2014).

<sup>13</sup> AE A (Experian Credit Report, dated April 1, 2014).

<sup>14</sup> AE A, *supra* note 13, at 23-25. Applicant noted that he had done a quick search on the Internet for individuals with his same first and last name, and 879 came up with the identical spelling of his first name and 3,409 came up with a spelling variation of his first name.

<sup>15</sup> Applicant's Answer to the SOR, dated August 27, 2014, at 1; Tr. at 24, 41, 44-45; AE H (Social Security Card and Medical/Dental Insurance Cards, undated); AE F (Statement of Earnings and Deductions, dated December 22, 2011); AE G (Statement of Earnings and Deductions, dated December 20, 2013).

<sup>16</sup> GE 3, *supra* note 12, at 6.

Applicant disputed the account for the reasons set forth above.<sup>17</sup> Additionally, it appears that the reported medical provider is located in the same state, but over 500 miles from Applicant's residence or workplace. The account was deleted from Applicant's credit report, and as of October 30, 2014, it is no longer listed.<sup>18</sup> The account, erroneously reported as Applicant's, has been resolved.

(SOR ¶¶ 1.b. and 1.c.): There are two child-support accounts with remaining and past-due balances of \$129,521 and \$18,243 that were placed for collection in March 2014, as reported by Experian.<sup>19</sup> Applicant disputed the accounts for several additional reasons: the account number that he previously had for both of his children was different from the ones in the credit report; he had routinely made timely child support payments through the state where he resided; those payments ended at least ten years earlier; and the debtor for the state child support enforcement division referred to in the credit report was for someone with a different middle name.<sup>20</sup> Applicant's social security number was removed from the state child support division's system, the adverse listings of those accounts were deleted from Applicant's credit report, and as of October 30, 2014, they are no longer listed.<sup>21</sup> The accounts, erroneously reported as Applicant's, have been resolved.

(SOR ¶ 1.d.): There is a medical account with a remaining and past-due balance of \$699 that was placed for collection in August 2011, as reported by Experian.<sup>22</sup> Applicant disputed the account for the same reasons as set forth above.<sup>23</sup> Additionally, it appears that the reported medical provider is located in another state nearly 900 miles from Applicant's residence or workplace. The account was deleted from Applicant's credit report, and as of October 30, 2014, it is no longer listed.<sup>24</sup> The account, erroneously reported as Applicant's, has been resolved.

(SOR ¶¶ 1.e. through 1.h.): There are four medical accounts with remaining and past-due balances of \$660, \$236, \$348, and \$127 that were placed for collection by the same medical provider (through two different collection agents) in September 2012 or

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<sup>17</sup> Applicant's Answer to the SOR, *supra* note 15, at 1; Tr. at 24, 41, 44-45; AE H, *supra* note 15; AE F, *supra* note 15; AE G, *supra* note 15.

<sup>18</sup> AE I (Experian Credit Report, dated October 30, 2014).

<sup>19</sup> GE 3, *supra* note 12, at 6; AE A, *supra* note 13, at 3.

<sup>20</sup> GE 2, *supra* note 7, at 4-5; Tr. at 52, 54.

<sup>21</sup> AE I, *supra* note 18.

<sup>22</sup> GE 3, *supra* note 12, at 7; AE A, *supra* note 13, at 4.

<sup>23</sup> Applicant's Answer to the SOR, *supra* note 15, at 1; Tr. at 24, 41, 44-45; AE H, *supra* note 15; AE H, *supra* note 15; AE F, *supra* note 15; AE G, *supra* note 15.

<sup>24</sup> AE I, *supra* note 18.

February 2013, as reported by Experian.<sup>25</sup> Applicant disputed the accounts for the same reasons as set forth above.<sup>26</sup> Additionally, it appears that the reported medical provider is located in another state nearly 700 miles from Applicant's residence or workplace. The accounts, as well as two others from the same medical provider, were deleted from Applicant's credit report, and as of October 30, 2014, they are no longer listed.<sup>27</sup> The accounts, erroneously reported as Applicant's, have been resolved.

(SOR ¶ 1.i.): There is a medical account with a remaining and past-due balance of \$225 that was placed for collection in March 2013, as reported by Experian.<sup>28</sup> Applicant disputed the account for the same reasons as set forth above.<sup>29</sup> Additionally, it appears that the reported medical provider is located in another state over 700 miles from Applicant's residence or workplace. The account was deleted from Applicant's credit report, and as of October 30, 2014, it is no longer listed.<sup>30</sup> The account, erroneously reported as Applicant's, has been resolved.

(SOR ¶ 1.j.): There is a library account with a remaining and past-due balance of \$15 that was placed for collection in October 2011, as reported by Experian.<sup>31</sup> Applicant disputed the account because had never been to the library and had no contact with it.<sup>32</sup> Additionally, it appears that the reported library is located in another state nearly 900 miles from Applicant's residence or workplace. The account was deleted from Applicant's credit report, and as of October 30, 2014, it is no longer listed.<sup>33</sup> The account, erroneously reported as Applicant's, has been resolved.

Applicant's most recent credit report – from October 2014 – reveals that he has a credit score of 746 from each of the three major credit reporting agencies, and they have characterized his credit category as excellent.<sup>34</sup> He has no delinquent accounts.<sup>35</sup>

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<sup>25</sup> GE 3, *supra* note 12, at 8, 11; AE A, *supra* note 13, at 4-7. There was an additional delinquent medical account from the same medical provider, in the amount of \$1,639, listed in the credit report, and it unclear why that account was not alleged in the SOR.

<sup>26</sup> Applicant's Answer to the SOR, *supra* note 15, at 1; Tr. at 24, 41, 44-45, 55-56, 58; AE H, *supra* note 15; AE H, *supra* note 15; AE F, *supra* note 15; AE G, *supra* note 15.

<sup>27</sup> AE I, *supra* note 18; AE J (Letter, dated December 18, 2014); AE K (Letter, dated December 18, 2014); AE L (Letter, dated December 18, 2014).

<sup>28</sup> GE 3, *supra* note 12, at 11; AE A, *supra* note 13, at 7.

<sup>29</sup> Applicant's Answer to the SOR, *supra* note 15, at 1; Tr. at 24, 41, 44-45, 59; AE H, *supra* note 15; AE H, *supra* note 15; AE F, *supra* note 15; AE G, *supra* note 15.

<sup>30</sup> AE I, *supra* note 18.

<sup>31</sup> GE 3, *supra* note 12, at 12; AE A, *supra* note 13, at 8.

<sup>32</sup> Applicant's Answer to the SOR, *supra* note 15, at 1; Tr. at 59.

<sup>33</sup> AE I, *supra* note 18.

<sup>34</sup> AE I, *supra* note 18, at 20-22.

## Personal Conduct

(SOR ¶ 2.a.): On March 5, 2014, when Applicant completed his e-QIP, he responded to questions pertaining to his financial record. One question in Section 26 – Financial Record (Delinquency Involving Routine Accounts) asked if, in the last seven years, he had bills or debts turned over to a collection agency; been over 120 days delinquent on any debt not previously entered, and if he was currently over 120 days delinquent on any debt. Applicant answered “no” to those questions. He certified that the response was “true, complete, and correct” to the best of his knowledge and belief, but, based on an analysis of his credit report, the response to those questions was considered to be false, for at that time, Applicant’s credit report erroneously listed several accounts that had been placed for collection. He steadfastly denied the accounts were his and disputed them. As noted above, his disputes were successful and the derogatory information was removed from his credit report.

## Work Performance and Character References

Applicant’s supervisor initially hired Applicant 12 or 13 years ago when they were with a different contractor on the same contract. He characterized Applicant in highly favorable terms. Applicant is very honest, dependable, helpful, and trustworthy, with integrity. Applicant has not missed any time from work for medical reasons.<sup>36</sup>

## 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.”<sup>37</sup> 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>38</sup>

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

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<sup>35</sup> Tr. at 62.

<sup>36</sup> Tr. at 35-38.

<sup>37</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>38</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."<sup>39</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.<sup>40</sup>

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."<sup>41</sup>

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."<sup>42</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are

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<sup>39</sup> "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>40</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>41</sup> *Egan*, 484 U.S. at 531.

<sup>42</sup> See Exec. Or. 10865 § 7.

reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

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

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), a "history of not meeting financial obligations" may raise security concerns. Applicant's most significant financial problem arose because of erroneous reporting of delinquent accounts belonging to individuals other than himself, who happened to have similar first and last names, sometimes with a different spelling of the first name and sometimes with a completely different middle name. Applicant was able to identify six such individuals who resided at various different addresses in seven different states. He steadfastly denied the accounts were his and disputed them. His disputes were successful, and the derogatory information was removed from his credit report. Applicant's most recent credit report – from October 2014 – reveals that he has a credit score of 746 from each of the three major credit reporting agencies, and that they have characterized his credit category as excellent. He has no delinquent accounts. As it pertains to the alleged financial considerations, Applicant's evidence has refuted and overcome the Government's case. AG ¶¶ 19(a) and 19(c) have not been established. In this instance, I conclude that Applicant's actions do cast doubt on his reliability, trustworthiness, or good judgment.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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.

The guideline notes a condition that could raise security concerns. Under AG ¶ 16(a), it is potentially disqualifying if there is

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.

On March 5, 2014, when Applicant completed his e-QIP, he responded to certain questions pertaining to his financial record. One question in Section 26 – Financial Record (Delinquency Involving Routine Accounts) asked if, in the last seven years, he had bills or debts turned over to a collection agency; been over 120 days delinquent on any debt not previously entered, and if he was currently over 120 days delinquent on any debt. Applicant answered “no” to those questions. He certified that the response was “true, complete, and correct” to the best of his knowledge and belief, but, based on an analysis of his credit report, the response to those questions was considered by the CAF to be false, for at that time, Applicant’s credit report erroneously listed several accounts that had been placed for collection. He steadfastly denied the accounts were his and disputed them. His disputes were successful and the derogatory information was removed from his credit report. Under these circumstances, Applicant’s response was accurate and truthful. As it pertains to the alleged personal conduct, Applicant’s evidence has refuted and overcome the Government’s case. AG ¶ 16(a) has not been established. In this instance, I conclude that Applicant’s actions do cast doubt on his reliability, trustworthiness, or good judgment.

### **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(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. Moreover, I have evaluated the various

aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>43</sup>

There is no evidence against mitigating Applicant's conduct. Applicant's credit report erroneously listed several accounts that had been placed for collection. He steadfastly denied the accounts were his and disputed them. Those disputes were successful and the derogatory information was removed from his credit report.

The mitigating evidence under the whole-person concept is substantial. Applicant has an outstanding reputation in the military and in the workplace. He did not have any financial problems except for the erroneous reporting of derogatory information in his credit report. While it is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under Directive ¶ E3.1.14 for pertinent allegations, and the burden shifts to an applicant to establish either that he or she is not responsible for the debts in question, or that matters in mitigation apply,<sup>44</sup> in this instance, Applicant has successfully refuted the contents of the credit report and the allegations in the SOR. Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has successfully refuted and overcome the security concerns arising from his financial considerations and personal conduct. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### **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
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

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<sup>43</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

<sup>44</sup> ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010).

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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ROBERT ROBINSON GALES  
Administrative Judge