



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



In the matter of:

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ISCR Case No. 24-02052

Applicant for Security Clearance

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

07/10/2025

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**Decision**

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PRICE, Eric C., Administrative Judge:

Security concerns arising under Guidelines F (Financial Considerations), H (Drug Involvement and Substance Misuse), and J (Criminal Conduct) are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 12, 2024. On December 30, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F, H and J. The DCSA acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

On February 25, 2025, Applicant answered the SOR and requested a decision on the written record in lieu of a hearing. On March 18, 2025, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Government Exhibits (GE) 1 through 5. Government Exhibit 1 is the SOR and Applicant's

Answer, which are the pleadings in the case. Applicant received the FORM on March 21, 2025. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. On April 18, 2025, Applicant submitted his response to the FORM. There were no objections by Applicant, and GE 1 through 5 are admitted into evidence. The case was assigned to me on June 10, 2025.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all SOR allegations with explanations. (GE 1) His admissions are incorporated in my findings of fact.

Applicant is a 45-year-old executive employed by a defense contractor since January 2024. He was employed in bank management positions from January 2013 to January 2024. He earned a bachelor's degree in 2002. He has been married since 2016 and was previously married. He has one child and two adult stepchildren. He was granted an interim security clearance on April 22, 2024, and signed a non-disclosure agreement on May 15, 2024. (GE 2, GE 5)

On January 3, 2024, State A filed a tax lien for \$6,037 in a state court that listed Applicant and his spouse as debtors for an unspecified tax year (TY). (GE 4) SOR ¶ 1.a alleges that Applicant is indebted to State A for the tax lien entered against him on about January 3, 2024, in the amount of \$6,037. Applicant admitted the allegation and stated the tax lien was for TY 2019. He noted that he moved from State A to State B in May 2019 and believed that State A miscalculated his tax liability for TY 2019 based upon his total income for TY 2019 and not just the portion of income earned while he was a resident of State A. He submitted W-2 forms that showed his and his spouse's state wages and amounts withheld for state income taxes in TY 2019. He asserted that based upon a Tax Table for "Single Filers in 2019" attached to his response that his tax liability should have been about \$3,995, or about \$117 more than his income withheld for state taxes. He said that he would "continue to research what I need to do to reconcile this item with [State A and] to determine if any tax liability exists." (GE 1)

In response to the FORM, Applicant asserted that: "my credit score has ranged from 660-760 with no late payments greater than 30 days and, outside of the state tax lien referenced, no other negative items. The reference to the [State A] tax lien was infrequent as it has only occurred once and was caused by extenuating circumstances of moving states in the middle of a tax year." He did not submit any documentary evidence of actions taken to dispute, resolve or otherwise address the tax lien.

In his April 2024 SCA, Applicant disclosed he failed to file and pay federal or state income taxes for TY 2020, as required. He claimed that "2020 Taxes have been paid. All State and Federal Taxes have been paid and filed for all periods up and to the tax year 2023." He reported the amount of his federal tax issue as \$16,000, provided a federal confirmation number, and said he used a personal check "for 2020 [State B] Taxes." He attributed his delinquent tax filings and payments to his inability to pay income taxes due when required. He had withdrawn \$100,000 from his 401K to pay for hardships incurred

because of COVID-19 including the loss of incentive-based income, housing costs, his spouse quitting her job, and increased expenses for two children. (GE 2 at 30; GE 3 at 3)

Applicant stated that when it came time to file TY 2020 income taxes, he was surprised that he owed about \$18,000 and could not afford to pay that amount, so he “pushed off filing indefinitely with no official extension.” His TY 2021 taxes due were about \$8,000 and he could not afford to pay that amount, so he sought an extension. He “wasn’t sure of the exact dates but knows that as of [March 2024] both 2020 and 2021 taxes have been completely paid off, resolving the issue with nothing still owed.” He said that he paid the overdue taxes with bonuses from his employer. He did not provide documentary evidence that he filed income tax returns for TY 2020 or TY 2021, or that he had paid overdue taxes for those tax years. He stated that his TY 2022 and TY 2023 income taxes were timely filed and paid. (GE 3 at 3)

Under Guideline H, SOR ¶ 2.a alleges Applicant purchased/used marijuana with varying frequency from about August 1999 to about September 2024, and SOR ¶ 2.b alleges that from April through September 2024 he used marijuana while in a sensitive position (*i.e.*, one requiring a security clearance). In his response to the SOR, Applicant admitted the allegations, said his use was very infrequent “with long stretches of years with no use.” He noted his infrequent use had no impact on his employment, and “declared that [he] will no longer be using marijuana.” (GE 1) In his response to the FORM, Applicant stated his marijuana use from 1999 to 2024 was infrequent, about “one to two times a year [and] marijuana has never been a part of my everyday life as demonstrated by the 16-year gap from 2002 to 2018 where I had zero use.” He also noted he had held multiple positions of responsibility, was viewed as reliable and trustworthy by his employers, and was entrusted to handle sensitive information. (FORM Response)

In his April 2024 SCA, Applicant disclosed he used THC or marijuana from about August 1999 to August 2023. He identified the frequency of use as “roughly twice a year and [as] almost exclusively edible THC [hereinafter marijuana] when consumed.” (GE 2 at 27) In response to a question regarding his intent to use marijuana in the future he stated, “I don’t intend to use this controlled substance as I really don’t enjoy the effects.” (GE 2 at 28) During an August 21, 2024 interview with a government investigator, Applicant stated he had not used marijuana from August 2023 through July 2024, “volunteered he had used marijuana in the form of a vape pen the day prior to the [interview];” said “he had been experimenting with it once a week over the last three weeks.” He believed it made “him more aware” and “more motivated” to be present as a parent; and that he “doesn’t know if he will continue to use it because he doesn’t know if it’ll continue to work.” (GE 3 at 3) He used marijuana with friends at social gatherings or on golf trips and continues to socialize with at least one of those friends. He purchased the marijuana from a dispensary in State A and disclosed that he continued to use it even though he knew it was illegal under federal law. (GE 3 at 3) I will presume the purchase and use of marijuana was legal under state law in State A.

There is no evidence that the purchase or use of recreational marijuana was or is legal in State B. Department Counsel asserted that recreational marijuana use is not legal in State B, that Applicant had provided no evidence of having a medical marijuana card

and provided a link to a State B website addressing State B's "medical marijuana program." Applicant neither objected to nor commented upon Department Counsel's assertions. (FORM at 2, FN 6; Response to FORM) The SOR does not allege where Applicant purchased or used marijuana.

During a September 16, 2024 interview with a government investigator, Applicant said he would not use marijuana in any form while in possession of a security clearance and emphasized marijuana was not important to him. (GE 3 at 4) In his December 9, 2024 response to Interrogatories, he reported first purchasing marijuana in July 2024, last purchasing it on September 6, 2024, last using marijuana on September 17, 2024, and that he had no intention to use it in the future. (GE 3 at 8) He stated his understanding that marijuana "has always been illegal" under federal law, and said he is "not addicted to substances and can easily choose to abstain from any situations." (GE 3 at 9)

Applicant's current employer required him to take a preemployment drug test. (GE 3 at 10, 13) He claimed that he was not subject to random drug tests by his current employer but submitted evidence that he was subject to random urinalysis tests under the company policy. (GE 3 at 10, 14-15) The stated goal of his employer's "Substance Abuse Policy & Testing Program" is "a safe workplace free from those problems associated with drug and alcohol abuse." It prohibits "having possession of, having present in a system of the body[, and] being under the influence of [an unprescribed controlled substance including marijuana during working hours]." All potential employees will be tested for controlled substances and all employees are subject to random, unannounced drug testing. Employees with a confirmed positive drug test are subject to discipline "up to and including termination" and a second positive test will result in termination; except if such positive test detects solely marijuana use then employer, at its sole discretion, may decline to terminate the employee. (GE 3 at 11-18)

## 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." EO 10865.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, 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 common sense decision. According to AG ¶ 2(c), 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 under this guideline 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. . . . An individual who is financially

overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions that he is indebted to State A for a tax lien entered against him on about January 3, 2024, in the amount of \$6,037, and the documentary evidence in the FORM establish two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts) and AG ¶ 19(f) (failure to pay state income tax as required).

Conduct not alleged in the SOR such as Applicant's failure to timely file some income tax returns or to pay income taxes when due that were not alleged in the SOR was not considered for disqualifying purposes but may be considered for the following purposes: (a) to assess his credibility; (b) to evaluate his evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether he has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) for whole-person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted)

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

None of the mitigating conditions are established. Applicant's assertion that State A miscalculated his income taxes due for TY 2019 and pledge to further research the matter may constitute a reasonable basis to dispute the legitimacy of the tax lien, however he has submitted no evidence to substantiate the basis of any dispute or of actions he has taken to resolve it. There is no evidence he has made any effort to pay or otherwise resolve the tax lien, or of any communications or arrangements with the state tax authority. Upon consideration of all the circumstances including his failure to timely file or pay income taxes for TY 2020 and TY 2021, Applicant has not established which tax year the tax lien applies to or that the January 2024 tax lien happened long ago, was infrequent, or occurred under circumstances unlikely to recur. His behavior casts doubt on his current reliability, trustworthiness, and good judgment.

#### **Guideline H, Drug Involvement and Substance Abuse**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

Applicant's admissions and the documentary evidence in the FORM establish three disqualifying conditions under this guideline: AG ¶ 25(a) (any substance misuse), AG ¶ 25(c) (illegal possession of a controlled substance including purchase), and AG ¶ 25(f) (any illegal drug use while holding a sensitive position).

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this case:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or

avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

The DOHA Appeal Board recently noted that “a commonsense understanding of the evolving landscape of marijuana law and policy in the United States informs us that simple recreational marijuana use no longer holds the same severe negative implications as many other illegal drugs,” which is “especially . . . true when the use occurs permissibly under state law.” ISCR Case No. 24-00914 at 3 (App. Bd. April 9, 2025) (citations omitted). The Appeal Board has identified several factors important in the assessment of recreational marijuana use including state law; the duration of abstinence; company policy; use after completion of an SCA; use while holding a sensitive position; and broken promises to abstain from future use. See ISCR Case No. 24-01001 (App. Bd. Apr. 22, 2025) (affirming denial of security clearance; factors: one year of abstinence from marijuana use; used marijuana after completion of an SCA; used marijuana after promising not to use marijuana on SCA and during a background interview); ISCR Case No. 24-1005 (App. Bd. Apr. 11, 2025) (denial of security clearance reversed; factors: two years of abstinence from marijuana use; no marijuana use while holding a security clearance or occupying sensitive position; marijuana possession and use was not illegal under state law; no use after notice that marijuana use was federally illegal).

Applicant used marijuana from August 1999 to about 2002, did not use it from 2002 to 2018, and used it about twice a year from 2019 to August 2023. He was aware the purchase and use of marijuana was prohibited under federal law when he completed his April 2024 SCA and stated his intent not to use it again. He abstained from using marijuana from August 2023 until early August 2024, but purchased marijuana in July and September 2024, and used marijuana in August and September 2024. There is no evidence he purchased or used marijuana in 2024 in a location where such conduct was prohibited under state law.

AG ¶ 26(a) is not established for the conduct alleged in SOR ¶¶ 1.a-1.b. Applicant’s September 2024 purchase and use of marijuana were recent. His marijuana use was infrequent prior to August 2024; however, he increased the frequency of use to weekly for at least three weeks in August 2024. His purchase and use of marijuana did not happen under unusual circumstances making recurrence unlikely. Instead, after declaring his intent not to use marijuana in the future in his April 2024 SCA, he purchased marijuana in July 2024, used it weekly in August 2024, stated his belief that it made “him more aware” and “more motivated” to be present as a parent; and said that he “d[id]n’t know if he will continue to use it because he doesn’t know if it’ll continue to work.” (GE 3 at 2-3) On September 6, 2024, he purchased more marijuana, told an investigator 10 days later that he would not use marijuana while in possession of a security clearance, and then used marijuana the next day. His purchases and uses of marijuana in 2024 occurred while he held a sensitive position, after he completed an SCA and stated his intent to not use marijuana again, after he was granted an interim clearance and signed an NDA, and after he was interviewed by a government investigator. His behavior casts doubt on his current reliability, trustworthiness and good judgment.

AG ¶ 26(b) is not fully established. Applicant has abstained from marijuana usage since September 17, 2024, but submitted no evidence that he has disassociated from his drug-using associates and contacts and no evidence that he has avoided the environments where he used drugs. He has declared that he does not intend to use marijuana in the future, but he has not submitted the signed statement required by AG ¶ 26(b)(3). In addition, he previously purchased and used marijuana after declaring his intent not to use it in the future, and as recently as August 21, 2024, equivocated on whether he would use marijuana in the future.

### **Guideline J, Criminal Conduct**

The SOR cross-alleges the conduct alleged in SOR ¶ 2.a under Guideline H as criminal conduct under this guideline. The concern under this guideline is set out in AG ¶ 30: "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." Applicant's admissions and the evidence in the FORM establish the following disqualifying condition under AG ¶ 31:

- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The following mitigating conditions are potentially applicable under AG ¶ 32:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Neither mitigating condition is established, for the reasons set out in the above discussion of Guideline H.

### **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 F, H, and J in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's age, work history, his employer's substance abuse and testing program, his security clearance history, and that he disclosed his drug involvement and substance misuse in his April 2024 SCA and on multiple occasions thereafter. I considered that there is no evidence Applicant purchased or used marijuana in a state where such purchase or use was prohibited under state law. I considered that he was aware that his purchases and use of marijuana were prohibited under federal law at the time of his purchases and uses.

I considered Applicant's periods of abstinence from marijuana use and his declarations that he would no longer use marijuana in April, September, and December 2024, and in February and April 2025. I also considered his August 21, 2024 statement that he did not know if he would continue to use marijuana. I considered his purchases of marijuana in July and September 2024, and that his increased frequency of use of marijuana in August 2024 and that his September 2024 use occurred while he held a sensitive position, after he completed an SCA, after he was granted an interim clearance and signed an NDA, and after he had declared his intent not to use marijuana again.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401. “[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information.” ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No. 12-00270 at 3 (App. Bd. Jan. 17, 2014)). Because Applicant requested a determination on the record without a hearing, I had no opportunity to observe his demeanor, assess his credibility, or question him about his tax lien and drug use. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

I have carefully applied the law, as set forth in *Egan*, EO 10865, and the Directive to the facts and circumstances in the context of the whole person. Applicant failed to meet his burden of persuasion, and the record evidence leaves me with questions and doubts

as to his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guidelines F, H, and J.

### **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**

    Subparagraph 1.a:                          Against Applicant

Paragraph 2, Guideline H:                   **AGAINST APPLICANT**

    Subparagraphs 2.a-2.b:                    Against Applicant

Paragraph 3, Guideline J:                   **AGAINST APPLICANT**

    Subparagraph 3.a:                          Against Applicant

### **Conclusion**

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

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Eric C. Price  
Administrative Judge