



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



In the matter of:)
)
) ISCR Case No. 17-04015
)
Applicant for Security Clearance)

Appearances

For Government: Brittany Muetzel, Esq., Department Counsel
For Applicant: *Pro se*

01/28/2019

Decision

MURPHY, Braden M., Administrative Judge:

Applicant mitigated criminal conduct security concerns. However, he did not mitigate personal conduct security concerns arising from a 2014 employment termination for sexual harassment. He did not acknowledge wrongdoing, and did not provide sufficient evidence to establish that his behavior is unlikely to recur. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) in July 2016, in connection with his employment in the defense industry. On December 27, 2017, following a background investigation, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline J, criminal conduct, and Guideline E, personal conduct. DOD CAF issued the SOR under Executive Order (Exec. Or.) 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 *National Security Adjudicative Guidelines* (AG), which became effective on June 8, 2017.

Applicant answered the SOR on January 22, 2018, and requested a hearing. The case was assigned to me on June 27, 2018. On July 26, 2018, a Notice of Hearing was issued scheduling the hearing for August 20, 2018. The hearing convened as scheduled. At the hearing, Department Counsel submitted Government's Exhibits (GE) 1 through 7. GE 1 – GE 3 and GE 5 – GE 7 were admitted without objection. GE 4 was admitted over an objection. Applicant submitted Applicant's Exhibits (AE) A through E.¹ AE A, AE B, and AE C were admitted without objection. AE D and AE E were admitted over objections. Applicant and two other witnesses also testified.

I left the record open to provide Applicant the opportunity to submit additional evidence, which he did, on August 23, 2018. His three post-hearing documents, and related correspondence, are marked collectively as AE F, and admitted without objection.² The transcript (Tr.) was received on August 29, 2018. The record closed on September 4, 2018.

Findings of Fact

In his Answer to the SOR, Applicant admitted SOR ¶¶ 1.a, 1.b, and 1.c, all with explanations. He did not answer SOR ¶ 2.a, but it is a cross-allegation of SOR ¶ 1. He partially admitted and partially denied SOR ¶ 2.b, with an explanation.³ His admissions and other statements are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 62 years old. He married his third wife in 2004. He has four adult daughters, one from his first marriage, and three from his second marriage. He joined the U.S. Navy after high school. He spent about six years on active duty, from 1975 to 1981. He also served in the U.S. Navy Reserve from 1996 to 2012. He retired as a petty officer first class (E-6). (Tr. 37-40; GE 1)

Applicant worked for defense contractor X from 2008 until he was terminated in March 2014. For the next two years, he had sporadic employment. He has held his current job, with a defense contractor, since February 2016. He has had a security clearance since 2008, and previously held one in the Navy. (GE 1; Tr. 13, 41, 94-95)

¹ AE A and AE B were also attached to Applicant's Answer.

² AE F includes certificates of completion for a DOD training course, "Sexual Assault Prevention and Response," from January 2017 and August 2018, and an August 2018 certification of completion for a gun safety course.

³ Applicant admitted the termination alleged in SOR ¶ 2.b, but denied the underlying reasons for it.

Guideline J

In October 1998, Applicant and his second wife had an argument. He testified that she was being physically combative. He said he defended himself, but also said he believes she wanted him to hit back so she could press charges. His eldest daughter was present. Applicant called police, and his wife left the house with them. She stayed with her parents. A few days later, after she filed charges, Applicant was arrested and charged with assault and battery of a family member. (SOR ¶ 1.c) He later pled not guilty. In February 1999, he was tried and found not guilty after a bench trial, and the charge was dismissed. Applicant and his second wife divorced later in 1999. (Tr. 52-54, 81-83; GE 1; AE C)

During the winter of 2015-2016, Applicant purchased a new firearm, a bolt action rifle. He kept his firearms in a gun safe in the basement. He said friends came over to see his weapons. He believes that, without his knowledge, one of them loaded a magazine into the rifle with a round in it, and then put the rifle back into the safe. Applicant was out of the room at the time. (Tr. 42-44, 82-87)

About a month later, in March 2016, Applicant was just getting over the flu, and “wasn’t thinking straight.” (Tr. 132) He took the rifle out of the safe to clean it. His wife was drifting in and out of sleep on a couch across the room. He testified, “I opened up the safe door, took the weapon out and grabbed it. I brought my hand down to support the stock, and my finger caught the trigger and [it] went off.” (Tr. 45, 100) The weapon’s safety was not engaged. He was holding the weapon upright. He did not know it was loaded. A round discharged and travelled over his wife’s feet on the couch, went through a window pane, and hit a neighbor’s parked car across the street. (Tr. 42-46, 82-88, 100)

Applicant’s wife “screamed and asked him what had happened.” (GE 3 at 3) After comforting her, he went outside to see if his neighbors were all right. He could not find the bullet. (GE 3 at 3) Neither she nor any neighbors reported the incident. He and his wife had not been in an argument that day. (Tr. 44, 48) About a week later, a neighbor noticed damage to her car and told Applicant about it. He paid for repairs “right away” (about \$600-\$800). (Tr. 48-50)

Applicant and his wife separated in May 2016. In June 2016, she filed charges. He believes that she did so at the urging of her daughter, with whom he does not get along. (Tr. 88-90) Applicant was arrested and charged with brandishing a firearm (SOR ¶ 1.a) and reckless handling of a firearm. (SOR ¶ 1.b) (Answer; GE 1 at 36-39; GE 2; GE 3 at 3-4; GE 7) He pled not guilty. His wife later wanted to reconcile and she dropped the charges, which were dismissed with prejudice in February 2017. She moved back in with Applicant in May 2018, and they remain together. (Tr. 50-51, 88-93, 98-99; AE A; AE B)

Applicant acknowledged that he “broke protocol” and did not handle the weapon safely, in accordance with his training. (Tr. 47) He said he should have looked more

closely to see if the weapon was loaded. (Tr. 132) He has been familiar with firearms since childhood. He had never had an “accidental” or “negligent” discharge of a firearm before. He admitted he was negligent and expressed remorse. (Tr. 46-47, 88, 97-98, 103, 138) After the hearing, he took a refresher course in gun safety. (Tr. 94; AE F)⁴

Guideline E

In 2014, Applicant was employed with defense contractor X. A female service member made a sexual harassment claim, alleging that a particular employee of defense contractor X had made inappropriate comments to her and had asked for her phone number. When the service member said she had a boyfriend, the worker told her he was “older and more stable and could take care of me.” She also reported that he touched her unnecessarily. Two other service members made statements reporting that a contractor had also touched them unnecessarily or made inappropriate comments to them. (Tr. 55-72; GE 6 at 1-4)

Applicant is not specifically named in the statements. However, contractor X’s internal investigation, conducted by representatives from human resources, soon centered on Applicant and another employee, Mr. A, based on their age, physical description and clothing. Both men were interviewed multiple times. The complainants were shown photographs of both Applicant and Mr. A, and they identified Applicant as the employee who acted inappropriately towards them. (GE 4, 5, 6)

Several of Applicant’s co-workers told the company interviewers that Applicant had a history of getting inappropriately or uncomfortably close to other people at work (both men and women) and of making inappropriate comments, particularly to and about women. (GE 6 at 4, 5, 6, 8) At hearing, Applicant testified that he felt that several of the employees who made negative comments about him during the company’s investigation were racially biased against him.⁵

When Applicant was interviewed by the company’s interviewers (both of whom were women), he denied making inappropriate comments to the female service members and denied touching them inappropriately or unnecessarily, as alleged. (GE 6 at 7) He also speculated to the company interviewers that he was falsely accused: “It is possible the females got together to collaborate and bring charges possibly against them;” and “It’s the gospel truth (when asked why female [service members] would make false allegations against them). (GE 6 at 6)

According to the company’s report (which paraphrases what Applicant said to the interviewers), he also made several comments to the interviewers about the female

⁴ Applicant also submitted a newspaper article about an incident in which a police officer accidentally shot and killed someone during a professional role-playing exercise. (AE D) Applicant offered the exhibit to show that even for professionals with constant firearms training, “everyone makes mistakes.” (Tr. 97)

⁵ Tr. 60; GE 4 at 4-5.

service members' appearance: 1) "If we (HR) saw the [service member], she should be flattered because she looks like nothing and is not that attractive;"⁶ 2) "With regard to the female [service member], if we can see what she looks like she should never make complaints and he would not waste his time;"⁷ and 3) "If he was going to do that he would not go after someone like that."⁸

The company's interviewers concluded that Applicant met the general description of the subject employee, and wore specific clothing identified by the complainants. The investigation also concluded that in his own statements, Applicant "was very open about female [service members'] behaviors to include whether they are attractive or not and how [they] are perceived by their male counterparts when they get rejected." (GE 4 at 5) The investigation also noted that Applicant's co-workers describe him as one who is known to make inappropriate comments to females and touch them.

The company investigation also confirmed that Applicant was trained in company X's code of ethics, conduct, and workplace harassment on February 10, 2014, 11 days before the complaint was made against him. Applicant acknowledged this at hearing, and said he had gone through similar harassment training earlier in his career at company X. (GE 4 at 6; Tr. 74-76)

In addition, company X's human resources substantiated that in 2009, Applicant was reprimanded or moved to another workplace for what was perceived as acting inappropriately towards a female employee after he spoke to her in Arabic, stared at her and made her uncomfortable. (GE 4 at 6, 7) At hearing, Applicant acknowledged being reprimanded but said he had been smiling at another employee and applauding her for getting an award. He disputed that he had acted inappropriately. He recalled being told by his supervisor to treat people with dignity and respect. Applicant told his supervisor that he agreed but did not understand what he did wrong. (Tr. 72-74, 77-79)

The company's investigation concluded that the number of incidents reported about Applicant carried greater weight than his adamant denials that he engaged in the behavior, making it more likely than not that it was Applicant who behaved inappropriately towards the female service members. (GE 4 at 5, 6) As a result, in March 2014, Applicant's employment was terminated, "effective immediately for violating [contractor X's] Code of Ethics and Business Conduct and Workplace Harassment policies." Mr. A was exonerated and returned to work. (GE 4 at 7; Tr. 77) (SOR ¶ 2.b)

Applicant reported his termination from company X, and the reason for it, on his SCA. (GE 1 at 14) In the summary of his background interview, he explained that he

⁶ GE 6 at 6.

⁷ GE 6 at 12.

⁸ GE 6 at 12.

needed access to a secure area. When he saw a female service member exit the compartment, he asked to access it, but this was denied. He then said he asked for a phone number to contact supervisors who might grant him access to the space. (GE 3 at 1) In his Answer to the SOR, he provided similar information. He acknowledged receiving a letter of termination. He said his termination was “due to allegations of sexual harassment,” which he denied “to the fullest extent.” (Answer)

At hearing, Appellant denied making sexually suggestive comments to the service members, or anything that might be construed as such. (Tr. 62-63) He did not acknowledge any specific action he allegedly took, or any specific statement he allegedly said, to the female service members. (Tr. 79-81) He stressed several times during his testimony that he felt he had been wrongly accused, both by other contractor employees (Tr. 60-61) and the female service members. (Tr. 100-101, 138)⁹

Applicant testified that his current employer “has provided classes for sexual harassment and workspace ethics, and I have taken it, and I understand it, and I adhere to it.” (Tr. 96) He submitted documentation of his training after the hearing. (AE F) He also testified that he worked with women on active duty, mentored them and considered them “like my sisters.” He also worked with female customers in his current job, and “I’ve never had any complaints. I’ve had a lot of praises.” (Tr. 101)

Applicant’s supervisor testified that he has known and supervised Applicant since February 2016. The witness has held his position, with a clearance, for eight years. He works with Applicant on a daily basis. He has never witnessed Applicant engage in any inappropriate behavior, nor is he aware that Applicant has done so. He has not heard that Applicant has ever made any lewd or improper comments. Applicant “always seems to go out of his way” to be professional. He has never had to counsel Applicant. Applicant has been through sexual harassment training, as required. Prior to the hearing, he was aware of the firearms charges but not the other allegations. (Tr. 105-113)

Another witness, a longtime close friend, has known Applicant for 18 years, since they served together in the Navy Reserve. They are also former co-workers. The friend has had a clearance for many years. He has never seen Applicant treat people with anything other than courtesy and respect. He took care to stress that he has no personal knowledge of the allegations in this case, other than what Applicant has told him, since he was not there when they occurred. (Tr. 114-123, 129)

Both men are experienced and practiced gun owners. They have gone to the shooting range together, and he is not aware that Applicant has ever had any other negligent discharges. He does not believe Applicant discharged the weapon maliciously. (Tr. 127-129)

⁹ Applicant also submitted an academic article to bolster his view that that women make false sexual allegations. (AE E)

The friend testified that sometimes a person might say something that could be misinterpreted or misconstrued by the person who heard the comment. He attributed this, in part, to generational differences. He acknowledged, however, that that is why sexual harassment and ethics training exists, to allow protections in the system for complainants, so they can address such issues with their supervisor. (Tr. 124-125)

The friend is not aware of anything Applicant has said of a sexual nature that might be misconstrued by someone who heard the comment. The friend never witnessed Applicant being counseled or reprimanded for making physical contact that was “not well received.” (Tr. 126) The actions that led to Applicant’s termination, however, are “way out of his character.” (Tr. 114-123, 128)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court noted in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”¹⁰

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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(a), 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 not drawn 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. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

¹⁰ *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain 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 the 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.

Analysis

Guideline J: Criminal Conduct:

AG ¶ 30 expresses the security concern for criminal conduct:

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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is applicable:

(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.

In 1998, during his second marriage, Applicant was arrested and charged with a domestic violence offense against his second wife. In 2016, he was charged with two firearms offenses after a negligent discharge of his weapon at home, while his wife was present. SOR ¶¶ 1.a and 1.b are alleged separately, though they arose from the same incident.¹¹ Thus, they are more properly considered as a single allegation. SOR ¶ 1.b is found for Applicant, as it is largely duplicative of SOR ¶ 1.a. Further, Applicant is also alleged to have committed both firearms offenses “while holding a clearance.” This is true, but the fact that he held a clearance at the time does not constitute additionally disqualifying conduct under either guideline alleged. AG ¶ 31(b) applies to the offenses at SOR ¶¶ 1.a and 1.c, even though they were later dismissed.

¹¹ Tr. 136-138.

AG ¶ 32 sets forth the potentially applicable mitigating conditions:

(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.

AG ¶ 32(a) applies to the 1998 domestic violence charge. The incident occurred about 20 years ago, during a marriage that ended shortly thereafter. Applicant was also found not guilty. He has had no other domestic violence charges in the years since then. The offense at SOR ¶ 1.c is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, and judgment.

AG ¶¶ 32(a) and 32(d) apply to mitigate the firearms charges (considered as a single allegation, as noted above). Applicant credibly testified that the charges resulted from a negligent discharge of his weapon, something which had never happened before. He was remorseful, and accepted full responsibility. He is an experienced gun owner, and he acknowledged that the incident should never have happened, and could have caused great harm. He voluntarily took refresher firearms training afterwards. The gun charges are unlikely to recur and he took rehabilitative action. He has mitigated the criminal security concerns.

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 or sensitive information. . . .

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

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may

not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . .

(2) any disruptive . . . or inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

The criminal conduct allegations, noted above, are also cross-alleged as SOR ¶ 2.a. The general personal conduct security concern (AG ¶ 15) and AG ¶ 16(c) are satisfied.

Under ¶ E3.1.14 of the Directive, the Government had the burden to establish controverted facts alleged in the SOR. SOR ¶ 2.b alleges that Applicant “was fired from his position with [contractor X] in 2014 for sexual harassment.” Applicant admitted that he had been terminated and that it was due to allegations of sexual harassment. SOR ¶ 2.b, as written, is established by the record evidence.

However, Applicant adamantly and consistently denied that he committed the acts of sexual harassment that led to his termination. He did so: 1) during the company’s investigation of the complaints; 2) during the background interview for his clearance; 3) in his Answer to the SOR; and 4) at hearing.

When three female service members made allegations of sexual harassment against a company X employee, Applicant’s employer conducted a thorough investigation. The company interviewed the subjects, Applicant and another employee, Mr. A, twice. They interviewed several other employees, who verified Applicant’s actions and described him as one known to make inappropriate comments to females and touch them inappropriately or unnecessarily. Applicant was also identified in photographs shown to the complainants. The company’s investigation concluded that Applicant met the general description of the subject employee and wore specific clothing identified by the complainants.

Further, though he adamantly denied the allegations, Applicant made several inappropriate statements *to the company interviewers* regarding the female service members’ physical attractiveness and other perceptions about their reactions to male attention that lent credence to the allegations that Applicant was the employee who spoke to and acted inappropriately towards the female service members in the first place. Given the strength of the independent evidence gathered during the

investigation, and based on Applicant's own words, the company concluded that it was more likely than not that he had done what he had been accused of, despite his denials.

The DOHA Appeal Board has held that an employer's characterizations of events underlying an adverse action are entitled to "some deference."¹² With that guidance, and in consideration of the Government's evidence as well as Applicant's testimony, I conclude that Applicant's termination, as alleged in SOR ¶ 2.b, is fully established by the record evidence, as is company X's rationale for it, as established by their thorough investigation of the service members' complaints. I therefore give the company's conclusions about Applicant's actions, and their reasons for terminating him, significant deference. SOR ¶ 2.b satisfies the general personal conduct security concern (AG ¶ 15) as well as the "catch-all" disqualifying conditions of AG ¶¶ 16(d)(2) and (3).

Under AG ¶ 17, the following mitigating conditions are potentially applicable:

(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;

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

(f) the information was unsubstantiated or from a source of questionable reliability.

Although the criminal conduct allegations are mitigated under Guideline J as discussed above, I must also consider them as part of the total pattern of Applicant's behavior and judgment, not just in a piecemeal fashion as a series of unrelated incidents.¹³ Having done so, however, I still conclude that, while Applicant's criminal offenses are also instances of generally poor judgment, they are also mitigated under AG ¶¶ 17(c) and 17(d) for the same reasons they are mitigated under AG ¶¶ 32(a) and (d), above.

This leaves SOR allegation ¶ 2.b. On the one hand, there is some mitigating evidence to consider. Applicant's actions occurred more than four years ago. His current supervisor testified that he is not aware that Applicant has ever engaged in any inappropriate behavior, or ever made any lewd or improper comments, in his current

¹² ISCR Case No. 14-0114 at 3 (App. Bd. Sept. 30, 2014)(citing ISCR Case No. 10-03886 at 3 (App. Bd. Apr. 26, 2012)).

¹³ See, e.g., ISCR Case No. 03-22563 at 4 (App. Bd. Mar. 8, 2006) (regarding the need to avoid a piecemeal analysis).

job. Applicant has never been counseled for inappropriate comments or behavior. He has taken his employer's required sexual harassment training, and said he would adhere to it.

On the other hand, several factors weigh against a conclusion that Applicant has fully mitigated allegation ¶ 2.b. Chiefly, he never acknowledged any wrongdoing, either during the company's investigation at the time, or at any time since, despite strong evidence that he committed the acts alleged. This casts significant doubt as to the veracity of his statement that he will adhere to the sexual harassment training he has taken from his current employer. He took that training, but has not taken it to heart.

Applicant's denials stand in stark contrast with his acknowledgment of wrongdoing concerning the negligent weapon discharge. In that instance, he credibly testified that he knew he was wrong, that it should not have happened, and that he knew better based on a lifetime of training and experience with firearms.

It is also noteworthy that all of the allegations in this case (even those that are mitigated), involve Applicant's interactions with women. Each time, Applicant asserted that the charges were brought by women who he believed had something against him (his second wife, as to SOR ¶ 1.a; his third wife's daughter, as to SOR ¶¶ 1.b and 1.c, and several female service members, as to SOR ¶ 2.b)

Further, the credibility of Applicant's denials of wrongdoing in 2014 must also be balanced against the weight of the independent evidence against him. As company X concluded, the weight of the evidence here falls against the Applicant, and makes it more likely than not that he committed the acts alleged. For AG ¶ 17(f) to apply, Applicant must establish that "the information was unsubstantiated or from a source of questionable reliability." Here, given the thoroughness of company X's investigation, the opposite is true. The company's conclusions that Applicant likely did and said what he was accused of, are substantiated and highly reliable. AG ¶ 17(f) does not apply.

The fact remains that Applicant's demonstrated attitude towards women, and his lack of acceptance of any responsibility for his actions towards them, or expressions of remorse, undercut any finding that he is rehabilitated, or that his actions are unlikely to recur. AG ¶¶ 17(c) and (d) do not apply to mitigate the security concerns established by Applicant's actions and comments that led to his 2014 termination, as alleged in SOR ¶ 2.b. Personal conduct concerns are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant 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 J and E in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for access to classified information.

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 J:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant

Conclusion

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

Braden M. Murphy
Administrative Judge