



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 19-01511
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

01/22/2020

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant conducted Internet searches for pornographic images of underage teen females between 2002 and 2003, and he had sexual contact with his then-infant daughter in late 2005. In approximately 2006, he attempted to lure a neighbor’s 15 or 16-year-old daughter to his basement with the intent of kissing and, if she consented, also fondling her. A 2018 clinical evaluation was negative for pedophilia, but it is undermined by Applicant’s failure to be fully candid about his sexual behaviors with the clinician. Applicant also misrepresented the circumstances of his sexual misconduct involving his daughter during a pre-polygraph interview for another government agency (AGA). Clearance eligibility is denied.

Statement of the Case

On June 26, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline E (personal conduct) and Guideline D (sexual behavior). The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within*

Industry (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On August 2, 2019, Applicant responded to the SOR allegations, and requested a decision based on the written record in lieu of a hearing. On September 19, 2019, the Government submitted a File of Relevant Material (FORM), referencing 13 exhibits (Items 1-13). On September 20, 2019, the Defense Office of Hearings and Appeals (DOHA) forwarded a copy of the FORM to Applicant and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on September 25, 2019. No response was received by the October 25, 2019 deadline. On January 8, 2020, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on January 13, 2020.

Evidentiary Ruling

Department Counsel submitted, as Item 13, summary reports of personal subject interviews (PSI) of Applicant conducted on January 3, 2019, and February 8, 2019. The summary reports were part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personal background ROI may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary reports did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the DOHA Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In the FORM, Applicant was advised as follows:

IMPORTANT NOTICE TO APPLICANT: The attached summary(s) of your Personal Subject Interview(s) is/are being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to the File of Relevant Material (FORM), you can comment on whether the summary(s) of your Personal Subject Interview(s) accurately reflect(s) the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary(s) clear and accurate. Alternatively, you can object on the ground that the report(s) is/are unauthenticated by a Government witness and the document may not be

considered as evidence. If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary(s) and may consider the summary(s) as evidence in your case.

Applicant did not respond to the FORM. Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summary report, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. In the absence of any objections, I accepted Item 13 in evidence, subject to issues of relevance and materiality in light of the entire record.

Summary of SOR Allegations and Response

The SOR alleges under Guideline E (SOR ¶ 1) and cross-alleges under Guideline D (SOR ¶ 2.a) that Applicant searched the Internet 10 to 15 times between 2002 and 2003 for pornographic images of females ages 15 to 17 (SOR ¶ 1.a); that he placed his penis against the lips of his three-month-old daughter in approximately 2005 (SOR ¶ 1.b); and that sometime between 2006 and 2008, he devised a plan, which was foiled by a text to his wife from the intended victim, to lure a 15 or 16-year-old neighbor to his basement with the intent to kiss her, and, with consent, fondle her (SOR ¶ 1.c). Additionally under Guideline E, Applicant is alleged to have intentionally omitted relevant facts concerning his 2005 sexual misconduct involving his then-infant daughter (SOR ¶ 1.d) during a security interview by AGA in June 2018. (Item 1.)

Applicant submitted a detailed Answer in which he admitted the behaviors alleged in the SOR, but cited the passage of time without recurrence of the incidents; a psychosexual risk assessment negative for pedophilia as indication of the aberrational nature of his sexual misconduct involving his daughter; and a brief period of immaturity and poor judgment fueled by alcohol for the plan involving a then-teenage neighbor. As for his alleged lack of candor concerning his sexual misconduct with his daughter, Applicant asserted that the incident was out of character for him and explained that he had internally "suppressed" the incident for nearly 13 years before being "compelled" to divulge the information during a pre-polygraph interview. As for not revealing significant implicating details about his misconduct with his daughter and denying any other inappropriate contact with his daughter, Applicant claimed he misunderstood the question of the interviewer during that interview, and he denied any intention to withhold details of his behavior. He also denied any vulnerability to coercion because his spouse is aware of the incident involving their daughter. (Item 4.)

Findings of Fact

After considering the FORM, which includes Applicant's Answer to the SOR (Item 4), I make the following findings of fact:

Applicant is 47 years old. He has been married to his spouse since November 1997. They have two sons, ages 20 and 18, and a daughter age 14. Applicant earned a bachelor's degree in May 1995 and a master's degree in May 2002. He has spent his career in software engineering for the U.S. defense industry, holding positions of increasing responsibility for a succession of defense contractors. Since April 1, 2014, he has been employed as vice president of a small business providing services to the DOD intelligence community. (Items 5, 13.) He held a DOD clearance dating back to September 29, 1998, and was granted sensitive compartmented information (SCI) access eligibility by AGA on March 28, 2014. (Item 8.) As of the September 2019 FORM, he held a Top Secret clearance. (Item 13.) His SCI access eligibility was revoked on September 4, 2018, for the conduct alleged in the SOR. (Items 9, 12.)

To renew his SCI access eligibility, Applicant had a polygraph in May 2018 that was apparently inconclusive. (Items 6, 13.) Applicant was then re-tested by AGA on June 18, 2018. During pre-polygraph questioning, Applicant felt "compelled" to disclose an incident that happened around November or December 2005. He related that he was at home alone with his two or three-month-old daughter and watching television, when, for some unknown reason, he exposed his penis to his daughter. He claimed to not recall if he guided his daughter's hand or she acted on her own, but she grabbed his penis, and he became aroused. He stated that he immediately realized the inappropriateness of his behavior, pulled up his shorts, and laid his daughter on her blanket. He denied any other inappropriate contact with his daughter. (Items 6, 8.)

On June 19, 2018, Applicant was re-interviewed by AGA during a special investigation into the conduct involving his daughter that he had reported the previous day. About the incident involving his daughter in 2005, he related that he had grabbed the back of his daughter's head and pulled it toward his semi-erect penis, causing her lips to touch his penis for one to two seconds. After his daughter pulled her head away, he said to himself, "This is not right, this is not me, I don't want to do this," and he then laid his daughter on the ground without further incident. He acknowledged to AGA's representative that he had exposed his penis with the purpose of having his daughter play with it and suck it. When asked why he had not provided these details during his June 18, 2018 polygraph interview, he stated that "[he] did not want [AGA's polygraph examiner] to know the details." Applicant then revealed that he attempted to lure a 15 or 16-year-old female neighbor to his basement on one occasion between 2006 and 2008. He recounted that during a "get together with friends and neighbors," the teen had brought a child-development doll to his house. At some point, he took the doll to his basement and texted the teen, telling her to come to the basement to collect the doll. The teen instead showed the text to Applicant's wife, who then confronted him in their basement. Applicant acknowledged to AGA's representative that he had intended to kiss the teenager and would have fondled her if she consented. He expressed his belief that he

would have stopped before having sex with the teenager because of his morals. He explained that he had consumed too much beer that night, which may have contributed to his behavior. During his June 19, 2018 interview, Applicant also stated that on 10 to 15 occasions between 2002 and 2003, he conducted Internet searches for teenage pornography with the intention of viewing images of naked girls ages 15 to 17. He stated that he no longer attempts to view pornography of teenage girls as he now prefers viewing adult lesbian pornography. He denied he could be blackmailed for any of the incidents because he would tell his wife before anyone could coerce or blackmail him. (Items 7-8.)

Applicant's SCI access eligibility was suspended on June 20, 2018, and revoked on August 30, 2018, by AGA, because of his inappropriate sexual contact with his daughter; his failure to discuss the full extent of that incident during his June 18, 2018 polygraph interview; his intentional online searches for teenage pornography; and his attempt to lure a teenage female neighbor into his basement with the intention to kiss and, if she consented, fondle her. Although the incidents happened over a decade ago, they showed a concerning pattern of inappropriate and illegal behavior and occurred while Applicant had SCI access eligibility. (Item 8.) Applicant was notified of the access revocation on September 4, 2018. (Item 9.) Applicant's inappropriate sexual contact with his daughter was reported to his county's Department of Social Services (hereafter Social Services). (Item 10.)

On October 25, 2018, Applicant formally appealed the revocation of his SCI access eligibility. In a detailed statement, he expressed his belief that the behaviors were out of character for him and an isolated occurrence. In relating what had transpired over the summer of 2018 while he was investigated by Social Services and the police for his inappropriate sexual contact with his daughter almost 13 years earlier, Applicant stated that, on being informed by Social Services that allegations of sexual misconduct had been made against him, he "provided [his wife] the details that [he] had been strictly keeping to [himself] for the last 12+ years," adding:

For the obvious reason of losing her forever and the only person I ever truly didn't want to find out was my wife, I now had been forced to divulge this secret to her. She was obviously in a state of shock

Applicant explained that Social Services restricted him from having any unsupervised contact with his children, which he obeyed, and he voluntarily at his own expense underwent a psychological risk assessment by a clinician, who found no risk of a future incident and gave him an excellent prognosis. Applicant indicated that the Social Services' investigation was closed with a required finding of "Indicated," but that the contact restriction was lifted because Social Services felt he was not a risk to his children. Furthermore, the state's criminal investigation ran its course without any charges being filed against him. He added that the pressures and stresses that could have led to this aberration in his behavior were no longer present in his life, and he lived through situations of higher pressure and stress without incident. As to any vulnerability concerns, Applicant stated:

[His and his spouse's] relationship and bond are stronger than ever and continues to grow each day. I had chosen to bury this inside of me, intending for it to be buried forever, because I did not want to lose my wife and family. After it resurfaced during my polygraph, I had no other alternative but to tell my wife and select others in a need-to-know capacity and was ready to live with the consequences. There is no one else in this world that I fear finding out about any of this. Those who I care the most about know, they still love and support me and that is enough for me. In my opinion, at this point, this behavior cannot be used against me in a coercive or blackmailing fashion. . . . Although any behavior of this kind is uncalled for and extremely inappropriate, it was behavior that never escalated, it was minor on the scale of such incidents, and this behavior has never occurred again. Likewise, I have alleviated any concern of coercion and exploitation by revealing this behavior to those who need to know and anyone else who learns of this is of no consequence to me. (Item 10.)

On November 26, 2018, AGA sustained the revocation of Applicant's SCI access eligibility. (Items 11-12.)

On December 10, 2018, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) for an investigation into whether he should retain his Top Secret clearance. Applicant disclosed the revocation of his SCI access eligibility on his SF 86, stating:

[AGA] revoked my SCI access based on something I mentioned before my last CI [counterintelligence] polygraph. I had buried something from my personal life, not security-related nor work-related, that had happened more than 13 years ago. Based on something the polygraph technician said before starting the test, brought this back to my memory. I felt compelled to tell her at this point because I feared it would cause inaccurate results on my polygraph examination. Subsequently, I did pass that CI polygraph that day, but mentioning this personal matter resulted in the suspension of my SCI access pending further investigation. Following investigation, I was informed that my SCI was being revoked because they questioned my integrity and character for keeping this completely buried within me and keeping it from them for so long. This is the only blemish on my otherwise impeccable character and level of integrity. (Item 5.)

Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) on January 3, 2019. He explained about his SCI access revocation that he was asked a personal question during a polygraph that brought back a negative memory of an issue from 13 years ago. He stated that he divulged all information that was asked of him and passed the polygraph, and that after his SCI access was suspended, he was moved to a new role at work involving business development and staffing that did not require SCI access eligibility. Applicant indicated that he had many polygraphs for AGA over the years, and the issue had not previously come up. Applicant

declined to discuss the specifics of the incident with the OPM investigator beyond that it was sexual in nature. He identified his spouse and four current co-workers as the only people who know his SCI access eligibility has been revoked. He stated that only the people that need to know what happened are aware of what happened, and asserted the issue in question would never happen again. (Item 13.)

On February 8, 2019, Applicant was interviewed by a different OPM investigator. He responded negatively to whether he has had any sexual contact with his daughter since the 2005 incident, but admitted that nobody knew about the incident before his June 18, 2018 polygraph examination. He stated that his spouse was made aware of the incident after his polygraph. As for his behavior involving the underage teen neighbor, Applicant stated that the girl was babysitting at his home when he returned with his spouse. He was intoxicated and texted the teen from his basement, asking her to come meet him. The teen showed his wife the text message, and his wife confronted him. Applicant denied any other such incidents involving the teen. Regarding his online searches for pornography, he explained that he focused on 15 to 17-year-old females, and attributed his conduct to immaturity. He denied conducting any similar searches since he stopped, sometime between the births of his first and second children. Applicant admitted that his spouse was unaware of his online pornographic searches, but he believed she would attribute his searches for teen porn to where he was in his life at the time. He surmised that his relationship with his neighbors would probably be altered if they learned of the activity, but denied he could be blackmailed or coerced because his spouse knows of his past poor judgment and has accepted it. He indicated that he would not be concerned if others became aware, because the behavior was in the past and he is prepared to go forward. When asked why he had not been fully forthcoming about his sexual behavior during his polygraph interview with AGA on June 18, 2018, Applicant responded that he did not believe the information was pertinent to the investigation because it was personal in nature and had occurred so long ago. He admitted that that he had not told his wife about the incident with his daughter at the time it occurred because he was fearful of her reaction. (Item 13.)

On June 26, 2019, the DOD CAF issued the SOR (Item 1), which was received by Applicant on July 16, 2019. (Item 3.) In his August 2, 2019 Answer, Applicant described his Internet searches for nude female minors as not appropriate and immature behavior that was out of character for him. He stated that he has not searched for any type of pornography in more than 16 years as it no longer interested him. He also stated that he had “no explanation, only remorse” for his sexual contact with his daughter, and he cited a psychological risk assessment negative for pedophilia as evidence that the behavior was an aberration. He denied any risk of recurrence, explaining that since the Social Services’ investigation of summer 2018, he has “leaned harder into [his] faith, [and] surrounded [himself] with positivity to best guide [him] through good, bad and indifferent times of [his] life.” Concerning the incident with the teenage neighbor, Applicant related that on “deeper recollection, it was more closely aligned with early 2006,” and that it was “potentially fostered by having more alcoholic drinks than appropriate on the evening in question.” He expressed his belief that he would not have [sexually] acted on the incident had the teen “entertained [his] shenanigans and come to the basement.” Applicant cited

his maturity since “this moment of poor (and inebriated) judgment” as proof it would not recur. Regarding his alleged failure to be fully forthcoming during his polygraph interview with AGA, Applicant stated:

The “denial to the investigator” described in 1.d [of the SOR] was not denial, but a misinterpretation of the question on my part. My interpretation of her question was that there was no “other inappropriate contact” outside of this incident as a whole. There was no preconceived notion of being deceptive or purposely withholding any details. The incident had rushed back into my head prior to the start of the examination, I felt it was necessary to reveal the incident in order to clear my mind and focus on the task at hand; the CI polygraph. After reading paragraph 1.d. above, I understand the interpretation as provided, and unfortunately, my interpretation of the questioning by the investigator was different from the intended meaning of the questioning, and not “intentionally omitting relevant facts.” (Item 4.)

Applicant believes that his more than 20 years “of impeccably protecting and serving our nation and government as a contractor employee speaks volumes towards [his] reliability, trustworthiness and ability to protect classified and sensitive information.” He asserted, without any corroborating documentation, that every government civilian and colleague with whom he has worked on programs for AGA “can and would attest to [his] level of trustworthiness, integrity and ability to know right from wrong.” He also asserted that everyone would attest to him being “an honest and forthright person with a high level of integrity and trustworthiness.” Applicant denied that the incidents in the SOR could be a source of coercion, because his wife is aware “of the incident” and there is no one that could learn of his “past indiscretions” that would cause him to reveal information he has promised to protect. (Item 4.) Applicant’s work records apparently show that he has had annual reviews with his current employer and that he received the highest possible remarks in each review, performing above and beyond his employer’s expectations. (Item 13.)

With his Answer, Applicant submitted the report of the psychosexual risk assessment completed in early July 2018. According to the evaluating clinician, a licensed clinical social worker (LCSW), Applicant disclosed that he “impulsively” had his daughter touch his penis when she was between two and four months old, and that he felt “terrible and confused” and had no idea why he “did such a thing to [his] daughter.” Applicant advised the LCSW that he had suppressed the incident and did not intend to ever reveal it to anyone. He denied having any other urge or desire to engage his daughter or any other child sexually. The LCSW found nothing in Applicant’s life that would trigger the conduct; “no evidence of Pedophilia (an enduring sexual attraction to prepubescents) or any other mental health disorders that could cause him to act out sexually;” and no pattern of sexual conduct suggesting that Applicant would be likely to seek out sex with children. Applicant reported to the LCSW that he felt “distressed and disgusted with himself for committing the offense and hiding it from his wife and family.” In the opinion of the LCSW, Applicant expressed remorse and an adequate level of empathy for his daughter and others hurt by his behavior. He found Applicant to be honest about his sexual misconduct.

Noting that Applicant was not at a stressful stage in his life and that there was no evidence that Applicant acted out sexually prior to or after the incident involving his daughter, the LCSW concluded that the sexual conduct was an aberration and not indicative of a sexual disorder or preferential interest in children. The LCSW found no current mental health concerns and gave Applicant an excellent prognosis. (Item 4.) In reviewing the LCSW's report, I note there is nothing that indicates that Applicant made the clinician aware of his online searches to view nude teens or his attempt to lure his teenage neighbor for sexual contact.

In the FORM, the Government notified Applicant of its ongoing concern about his "gross lack of judgment on various occasions," which was viewed so seriously as to be not mitigated by the passage of time; that the behaviors make him vulnerable to exploitation or coercion; and that his vulnerability is "highlighted" by his dishonesty about the facts surrounding his sexual behaviors. The Government noted that Applicant claimed during his polygraph with AGA that his daughter had only touched his penis with her hand in 2005 and had not disclosed that he had pulled his infant daughter's head to position her mouth on his penis with the intention of having her suck it. Applicant was also informed in the FORM of the Government's concerns that he may not have been forthcoming during his psychosexual risk assessment in July 2018 in that nothing was said about Applicant having placed his daughter's mouth on his penis, about the incident involving his teenage neighbor, or about his online searches for naked teens. The Government also noted that it is unclear to what extent his spouse is aware of the details of the incident involving their daughter or of the other sexual behaviors. (FORM.) Applicant apparently chose not to respond to the FORM.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 E: Personal Conduct

The security concern about personal conduct is articulated 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigations or adjudicative processes. . .

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Applicant exercised extremely poor judgment within the context of Guideline E in several aspects. He conducted online searches to view images of nude female minors between 2002 and 2003. In late 2005, when his daughter was only an infant, he pulled his daughter’s head to his semi-erect and exposed penis, causing her lips to come in contact with his penis with the intention of having her suck it. His sexual contact was not only inappropriate and a betrayal of trust, it was criminal in nature. In approximately 2006, he attempted to lure a teenage neighbor to his basement with a plan to kiss her, and if she consented, fondle her. The security concerns are no less serious because his plan was thwarted by the teen, who exercised sound judgment and showed his wife the text in which he asked the teen to come to his basement. He attributes the incident to alcohol

and asserts that he would not likely have allowed the sexual contact to proceed to intercourse with the teen because of his morals. However, alcohol does not adequately explain his disturbing sexual behavior.

Guideline E security concerns were also alleged because, during his polygraph interview conducted on June 18, 2018 (SOR ¶ 1.d), Applicant disclosed that he had exposed his penis to his infant daughter, but claimed that she had grabbed at his penis or he may have placed her hand there, causing his penis to become erect. He denied to the AGA polygraph examiner that he had engaged in any other inappropriate contact with his daughter. Applicant asserts that he did not purposely withhold any details from the polygraph examiner, explaining that he misinterpreted the question as whether there were other incidents involving his daughter beyond the incident disclosed. In analyzing an applicant's intent, the administrative judge must consider an applicant's answers in light of the evidence as a whole. *See, e.g.,* ISCR Case No. 14-05005 (App. Bd. Sep. 15, 2017); ISCR Case No. 10-04821 App. Bd. May 21, 2012). I have considered Applicant's denial of any intentional misrepresentation or omission, but found his explanation not credible in light of other evidence. Most notably, his June 19, 2018 account of the incident with his daughter differs significantly from that provided during the polygraph interview. He admitted during AGA's investigation that he had pulled his daughter's head toward him and pushed her lips to his penis, causing his penis to become erect. He also admitted that he had not been completely forthright during the polygraph because he did not want the female polygraph examiner to know the details. Moreover, although not specifically alleged, he had not disclosed to the polygraph examiner on June 18, 2018, his efforts to view child pornography online, or his attempt to lure his teen neighbor for sexual contact.

Guideline E notes several conditions that could raise security concerns under AG ¶ 16. The following are potentially applicable in this case:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(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 information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

AG ¶ 16(b) applies because Applicant misrepresented details of his sexual misconduct with his daughter when he was interviewed by AGA's polygraph examiner. AG ¶ 16(e) applies in both aspects. Applicant's sexual behavior is personal conduct, which if known, could reasonably affect his personal, professional, or community standing, and he concealed relevant and material facts of his behavior.

The burden is on Applicant to mitigate the negative implications for his personal conduct raised by his sexual behavior and lack of candor. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 17. One or more of the following conditions may apply in whole or in part:

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

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(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

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(a) warrants some consideration, given Applicant was the sole source of the information concerning his sexual contact with his daughter, and he admitted during AGA's investigation following his polygraph that he had caused the sexual contact with his daughter. However, the mitigating impact of AG ¶ 17(a) is undermined by his present denial of any intentional misrepresentation and other evidence casting doubt on his representations.

AG ¶ 17(c) applies in that "so much time has passed" since he conducted online searches for, and likely viewed, teen nudity between 2002 and 2003; since he had inappropriate sexual contact with his then-infant daughter in late 2005; and since he attempted to lure his then 15 or 16-year-old neighbor for sexual contact in approximately 2006. However, his misrepresentations or obfuscations during his June 18, 2018 pre-polygraph interview, which occurred when he had SCI access eligibility and a Top Secret clearance, are neither so minor nor so distant in time to qualify for mitigation under AG ¶ 17(c). Moreover, it appears that Applicant was not completely forthright with the LCSW

who evaluated him for psychosexual tendencies in July 2018. There is nothing in the LCSW's report that indicates Applicant advised him about his online searches for pornographic images of minor females or about his attempt to lure a teenage neighbor to his basement for kissing and possible fondling.

AG ¶ 17(d) is likewise only partially established. Applicant acknowledged the inappropriate sexual behavior. He attributes his online searches for naked images of underage females to his immaturity, and the incident involving the teenage neighbor to being under the influence alcohol at the time. He has been unable or unwilling to explain his sexual contact with his infant daughter. In Applicant's favor, there is no evidence of any recurrence of the sexual misconduct in over a decade. Applicant admitted to AGA during its June 2018 investigation that he now prefers lesbian pornography. He provided no details as to the extent of his viewing of adult pornography, but it is not illegal conduct. He has a positive prognosis from the LCSW, who believes Applicant's sexual misconduct was an aberration and not an indication of a sexual disorder or preferential interest in children. This positive assessment must be viewed in light of the possibility that the LCSW did not know about Applicant's other conduct of a sexual nature, and Applicant's minimization of his incident with his daughter to the LCSW where he claimed he "impulsively" took out his penis and helped his daughter touch it. The LCSW's evaluation does not mention Applicant's online searches for pornographic images of underage teens or of his attempt to lure his teenage neighbor for sexual contact.

Applicant has yet to convincingly establish that his representations can be reasonably relied on. As a longtime security clearance holder, he had an obligation to respond to lawful questions of investigators, and he declined to discuss the incidents of sexual misconduct during his first OPM interview. He told AGA during its June 2018 investigation that he no longer attempts to view pornography of teenage girls as he prefers viewing adult lesbian pornography. Yet, when he answered the SOR in August 2019, he stated, "Since this time period [2002 and 2003], I have not searched for this type, nor any type of pornography," which is seemingly inconsistent with what he told AGA. As previously discussed, there is no indication that he told the LCSW in July 2018 about his online searches for pornographic images of teens or about his attempt to lure a teen for sexual contact. He undermines his credibility by claiming that he misinterpreted the question of the polygraph examiner about his sexual contact with his daughter. The personal conduct security concerns are not fully mitigated under either AG ¶ 17(c) or AG ¶ 17(d).

Vulnerability issues raised by his sexual behavior are only minimally mitigated under AG ¶ 17(e). Given Social Services' investigation into his conduct in the summer of 2018, Applicant was "forced" into telling his spouse about the incident involving their daughter. However, as aptly noted in the Government's FORM, it is not clear to what extent his spouse is aware of the details of his conduct involving their daughter. He revealed during AGA's investigation in June 2018 that he no longer attempts to view pornography of teenage girls and now prefers viewing adult lesbian pornography. There is no evidence that his spouse (or his children for that matter) knows of his interest in lesbian pornography. Applicant admitted to an OPM investigator in February 2019 that

his spouse was unaware of his online searches for pornographic images of underage teens. He also stated that his neighbors lack knowledge and that their friendship would probably be altered if it became known. Applicant claims that all those persons who have a need to know are aware, but he did not elaborate about who these persons are or what they know. He provided no letters from his spouse, children, co-workers, friends, or neighbors that could have alleviated vulnerability concerns. Applicant asserted in response to the SOR that “there is no one in this world that could learn of [his] past indiscretions” that would cause him to reveal information he has promised to protect. The Government is not required to wait to see what Applicant would do before taking actions to protect national security. For the reasons noted, the personal conduct security concerns are not fully mitigated.

Guideline D: Sexual Behavior

The security concern for sexual behavior is articulated in AG ¶ 12:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual’s judgment, reliability, trustworthiness, and ability to protect classified for sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 13. The following are potentially applicable in this case:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and
- (d) sexual behavior of a public nature or that reflects lack of discretion or judgment.

Applicant’s Internet searches to view pornographic images of teens between 2002 and 2003 on 10 to 15 occasions and his sexual contact with his then-infant daughter in late 2005 are criminal in nature. Applicant had criminal intent when he attempted to lure his teenage neighbor to his basement in approximately 2006. Applicant exhibited a serious lack of judgment in each instance, and as discussed under Guideline E, his sexual behavior is conduct that could make him vulnerable to coercion, exploitation, or pressure. AG ¶¶ 13(a), 13(c), and 13(d) apply.

Sexual behavior security concerns may be mitigated under AG ¶ 14. The following are potentially applicable in this case:

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

(c) the behavior no longer serves as a basis for coercion, exploitation, or duress;

(d) the sexual behavior is strictly private, consensual, and discreet; and

(e) the individual has successfully completed an appropriate program of treatment, or is currently enrolled in one, has demonstrated ongoing and consistent compliance with the treatment plan, and/or received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.

Regarding AG ¶ 14(b), it cannot be reasonably ignored that the conduct happened so long ago. AG ¶ 14(d) has no applicability to his sexual conduct, which could have been criminally prosecuted had it become known at the time. Regarding AG ¶ 14(e), Applicant has not completed any treatment for his sexual behaviors. He has a favorable prognosis from a LCSW, who opined in July 2018 that Applicant did not exhibit a sexual disorder or a preferential interest in children and did not need formal sexual offender treatment or mental health intervention. The passage of time without any evidence of recurrence of the sexual behavior provides support for this clinical assessment. However, as previously discussed, that assessment is undermined by the LCSW's apparent lack of knowledge about Applicant's involvement in child pornography and attempt to lure his 15 or 16-year-old neighbor to his basement for sexual contact. Despite the passage of time, the risk of vulnerability to coercion or pressure cannot be ruled out, and his sexual behavior remains of concern on that basis. Applicant has yet to tell his spouse about his interest in viewing pornography. It is unclear what she, or others know, about his sexual behavior. Concerns about the reliability of his representations make it difficult to accept without corroboration his assertions that those who have a need to know are aware of his sexual behaviors and that he cannot be coerced or pressured. Unmitigated vulnerability concerns exist irrespective of whether the sexual behaviors reoccur.

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 Guideline D, Guideline E, and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant asserts that “anyone [he has] ever come in contact with would attest to [him] being an honest and forthright person with a high level of integrity and trustworthiness.” His uncorroborated assertion is not enough to overcome the serious concerns for his judgment, reliability, and trustworthiness raised by his criminal sexual behavior committed on his daughter, who fortunately was too young to understand or be affected by his behavior; by the fact that he kept his misconduct secret for so many years; and by his recent lack of complete candor during government investigations. It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant.

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 E:	AGAINST APPLICANT
Subparagraphs 1.a-1.d.:	Against Applicant
Paragraph 2, Guideline D:	AGAINST APPLICANT
Subparagraph 2.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 interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge