DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 20-01644
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Shirin Asgari, Esq.

June 16, 2021

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate security concerns regarding criminal conduct and sexual behavior. Based upon a review of the pleadings, the documentary evidence, and the testimony, national security eligibility for access to classified information is denied.

Statement of the Case

On April 14, 2019, Applicant submitted a security clearance application (SCA). On October 30, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines D (Sexual Behavior) and J (Criminal Conduct). The CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016) (AG) effective for all adjudicative decisions within DoD on or after June 8, 2017.

Applicant responded to the SOR (Answer) and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On March 2, 2021, the case was assigned to me. On March 29, 2021, DOHA advised Applicant's counsel that his hearing would be conducted by video-teleconference on May 11, 2021, using the Defense Collaboration Services.

I convened the hearing as scheduled. Department Counsel presented eight proposed exhibits, marked as Government Exhibits (GE) 1 through 8, which were admitted without objection. (Tr. at 10-11.)

Applicant submitted five proposed exhibits marked as Applicant Exhibits (AE) A through E, which were admitted without objection. I *sua sponte* raised an issue regarding the possible application of the doctrine of collateral estoppel and gave the parties two weeks to submit post-hearing briefs on the issue. Both counsel provided timely briefs on the question. My ruling on this issue is set forth below. DOHA received the hearing transcript (Tr.) on May 21, 2021. (Tr. at 12.)

Findings of Fact

Applicant's personal information is extracted from his SCA unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, Applicant's testimony, and the documentary evidence in the record, I make the following findings of fact.

Applicant is 64 years old. He was formally educated through the eighth grade and later received a GED high school diploma. While he was imprisoned during the 1990s for child molestation, as described in detail below, he took some college courses. He first married in 1977. In 1974, his wife had a daughter from a prior relationship. Applicant later adopted his stepdaughter (SD) and gave her his last name. Applicant and his first wife had two daughters of their own. They were born in 1980 (D2) and 1987 (D3). In 1991, their marriage ended in divorce. Applicant remarried in 1996 and divorced again in 2003. He married a third time in 2005 and that marriage ended in divorce in 2007. Applicant and his current spouse married in 2012. He and his wife have an eight-year-old daughter. (AE C at 5.)

Applicant enlisted in the U.S. Marine Corps in 1974 at the age of 18. He served in the Marine Corps until 1978. He then served two years in the inactive reserves. In 1980, he enlisted in the U.S. Navy. While serving in the Navy, he held a security clearance for five years. He was dishonorably discharged in 1995 after being convicted in a General Court-Martial of committing indecent acts upon two minor children and served a term of imprisonment. (Tr. at 15, 17, 30, 49-52.)

Applicant has worked for a U.S. defense contractor since 2004. In 2007, he applied for a security clearance, but decided not to proceed to a hearing on his application. He applied again in 2019 with his submission of the current SCA. (Tr. at 15-16, 30, 49-52.)

Sexual Behavior and Criminal Conduct

In July 1987, Applicant pleaded guilty at a General Court-Martial to the offenses of carnal knowledge, sodomy, and indecent acts involving SD and was convicted. The Court-Martial was convened at an overseas Naval base (the 1987 Court-Martial). The Charges alleged that his crimes began in about March 1985 when SD was 10 years old. At the DOHA hearing, Applicant testified that his sexual misconduct with SD actually began several years earlier. The sexual assaults continued for a period of time after 1985. He was sentenced to confinement for 90 days, reduction in pay grade to E-5, and a reprimand. (Tr. at 33, 43, 54; GE 6 at 5; GE 7 at 3.)

Applicant was released from the brig in October 1987 (1987 Release). Shortly thereafter, he was transferred to a base in the United States. His family returned with him. In April 1988, SD, D2 and D3 were placed in the custody of the local county child protective service. The local juvenile court permitted the children to reside with their mother on the condition that Applicant remove himself from the family home. He was ordered by the court to have no contact with the children other than during supervised visits. He testified that he and his family voluntarily participated in counseling for four to five years. He also admitted, however, that the counseling was a requirement of the juvenile court. (Tr. at 22-23, 32-33; GE 6 at 5; GE 7 at 3.)

In November 1988, SD was placed in a psychiatric hospital for two months. She was then transferred to a residential treatment center for an extended stay. SD advised her primary counselor at the treatment center that Applicant had returned to the family residence in violation of the court order. She further confided that he had continued to molest her after his 1987 Release until her hospitalization. (GE 6 at 5; GE 7 at 3.)

At the DOHA hearing, Applicant denied that he molested SD after his 1987 Release and after his transfer to the United States. He also minimized the extent of his contact with his children, including SD, at their home to one occasion when the girl's mother asked him to come to her home to help her by repairing her car. He admitted that this was a violation of the court order (the One-Time Home Visit). He testified that it was this unauthorized visit that resulted in an investigation of his contacts with SD, which extended to an investigation of his sexual misconduct with D2 and D3. He further testified that his One-Home Visit was the reason he had to face a second General Court-Martial in 1990-1991. (Tr. at 22, 35-36, 53.)

The record evidence establishes that SD's allegations were investigated and Applicant was charged at a second court-martial with rape, carnal knowledge, sodomy and 11 specifications for indecent acts upon SD and two specifications for indecent acts upon D2 and D3. He was convicted of three specifications involving indecent acts. (GE 6 at 5.)

At the time of the court-martial in December 1990 and early 1991 (the 1991 Court-Martial), SD was 16 years old, D2 was 10, and D3 was 2. SD experienced extreme emotional difficulties, testifying on cross-examination about the details of certain of the

specifications. The military judge, who was sitting alone without a jury, denied a defense motion to strike all of SD's testimony, but allowed a portion of her testimony regarding two incidents that occurred during the summer of 1988 in which she described Applicant fondling her breasts. The basis for this exception was that SD responded to questions about these incidents on cross-examination, which the judge ruled satisfied Applicant's right to confront his accuser. (GE 6 at 6; GE 7 at 3-6.)

On direct examination, SD also testified that Applicant once tied her to her bed, had sexual intercourse with her, and then untied her and performed anal sodomy on her. She also testified that Applicant had penetrated her with a vibrator. Due to her extreme emotional distress, SD refused to respond to further questions on direct examination and to any questions on cross-examination about being tied to her bed and Applicant's sexual behavior on that occasion. One of the specifications alleged against him was that he also penetrated SD with a banana and carrots. The judge granted a defense motion for a finding of not guilty to Charges I and II alleging rape and sodomy and Specifications 3 through 11 of Charge III, which alleged various indecent acts upon SD during the period October 1987, after Applicant's release from the brig, to April 1989. The judge's ruling was based upon SD's inability to participate in cross-examination on those issues, which denied Applicant his confrontation right. In June 1991, Applicant was convicted of two indecent acts involving SD, Specifications 1 and 2 of Charge III, which alleged that Applicant fondled her breasts on two occasions and one specification of indecent acts involving Applicant's baby girl, D3. (GE 6 at 6; GE 7 at 3-6.)

D2 testified at the 1991 Court-Martial that Applicant had sexually molested her by fondling her breasts and vaginal area. She also testified that she had seen Applicant tie SD to her bed and have sex with her. She further testified that on one occasion she observed Applicant digitally penetrate D3 while changing her diapers. The military judge dismissed the specification alleging indecent acts with D2 on the basis that the acts occurred beyond the statute of limitations. Applicant was convicted of one specification of indecent act involving D3. (GE 6 at 5-6.)

Applicant was sentenced to six years imprisonment, total forfeitures of all pay and allowances, reduction to pay grade E-1, and a dishonorable discharge. He was released after serving four years in prison. His conviction was upheld on appeal by the U.S. Navy-Marine Corps Court of Criminal Appeals. The court concluded, *inter alia*, that the record evidence supported the military judge's findings of Applicant's guilt beyond a reasonable doubt to the specifications of indecent acts involving SD and D3. The three-judge panel of the appellate court also added, "we, too, are convinced of the [Applicant's] guilt beyond any reasonable doubt." (Tr. at 30; GE 5 at 3; GE 6 at 12.)

Applicant did not testify at the 1991 Court-Martial. At the DOHA hearing, he repeatedly denied that he engaged in any sexual misconduct with SD, D2, or D3 after his 1987 Release. He also claimed that the only reason he was prosecuted in the 1991 Court-Martial was his One-Time Home Visit. Applicant also testified that the charges raised in the 1991 Court-Martial were the same charges involving his indecent acts against SD prior to his guilty plea in July 1987. The verdict of the military judge and the ruling of

appellate courts are completely inconsistent with Applicant testimony. While Applicant was relieved of criminal responsibility for indecent acts on D2 due to the statute of limitations, he was found guilty of indecent acts of SD and D3. he was found guilty of indecent acts on SD and D3. (Tr. at 21, 22, 52, 53, 55-56.)

Collateral Estoppel

At his DOHA hearing, Applicant testified that he did not commit the crimes he was convicted of after his 1987 Release. These crimes were the subject of the 1991 Court-Martial.

Department Counsel's post-hearing brief on the issue of collateral estoppel persuasively established that the doctrine of collateral estoppel bars Applicant from relitigating his guilt in the instant proceedings. In her post-hearing brief, Applicant's Counsel's agreed that Applicant is collaterally estopped from relitigating the issue of his guilt as determined in the 1991 Court-Martial. Department Counsel in her post-hearing brief cited a number of DOHA Appeal Board decisions as to what has become "black letter law" at DOHA on the issue of collateral estoppel. One of the precedents she cited was the Appeal Board's decision in ISCR Case No. 04-05712 at 6 (App. Bd. Oct. 31, 2006), which is the authoritative precedent on the issue. She argued that the three requirements set forth in that Appeal Board case are satisfied in the instant matter. One, Applicant was found guilty in the Court-Martial of the criminal charges that are the subject of SOR allegations 1.c and part of 2.a. Therefore, the issue of his guilt is the same in both the court-martial and the DOHA proceeding. Two, he was given a full and fair opportunity to litigate his claims of innocence in the 1991 Court-Martial. And three, the application of collateral estoppel in the DOHA proceeding does not result in any unfairness to Applicant. I agree with Department Counsel's argument and rule that Applicant is collaterally estopped from challenging his conviction of crimes in the 1991 Court-Martial.

Applicant's counsel argued in her brief that at the DOHA hearing Applicant did not intend to relitigate the charges of which he was found guilty in the 1991 Court-Martial. Rather, he was just disputing the charges "as he did during those proceedings when the charges were brought against him." She argued, in other words, he was just consistently maintaining his innocence. She argued further that Applicant's testimony regarding his innocence of the charges was solely to provide his perspective on the charges, which "pertains to mitigation of those charges." However Applicant's position is interpreted, it is clear that he does not presently take responsibility for the crimes of which he was convicted by the military judge in June 1991. (Government's Position on the Applicability of Collateral Estoppel to the Instant Case; Applicant's Position on the Applicability of Collateral Estoppel to the Instant Case.)

Credibility

Applicant's credibility was seriously damaged by his testimony that the indecent acts he was accused of committing in the 1991 Court-Martial were the same incidents that formed the basis of his conviction in his 1987 Court-Martial. This argument ignores

the record evidence of his conviction of two incidents of his fondling SD in the summer of 1988, about a year after Applicant's first conviction in July 1987. Applicant's testimony about the One-Time Home Visit to his family's home lacked credibility in light of the testimony at the 1991 Court-Martial of the acts of child abuse committed over a period of time after his 1987 Release and after the juvenile court's restraining order. (Tr. at 54-55, 58; GE 6; GE 7.)

I also found Applicant's demeanor at the hearing to be unconvincing and inconsistent with someone who was reliably telling the truth. While he testified that he accepted responsibility for the emotional damage he caused to his children, his testimony relied excessively on how well his children treat him today, suggesting that all has been forgiven and was never a serious problem in the first place. He has no explanation for the highly damaging testimony of both SD and D2 against him, which renders his claims of innocence completely unpersuasive. Also, he never spoke with SD and D2 as to why they testified as they did if their testimony was not true. (Tr. at 14, 26-27, 31, 41, 43-45, 61.)

Character Evidence

While serving in the Marine Corps and the Navy, Applicant received several medals and ribbons. Applicant's separation from the Marine Corps was characterized in his DD 214 as "Honorable." As noted above, his discharge from the Navy was characterized as "Dishonorable." The President of his employer since 2004 wrote a letter of recommendation in which he characterized Applicant as "a wholesome, caring and respected individual by his superiors and subordinates (sic)." He also describes Applicant as "loyal, trustworthy, and dependable." Applicant also submitted into the record a December 2020 Letter of Appreciation signed by his employer's President stating that Applicant is "an invaluable asset to the company." Applicant has received several awards from his employer. (Tr. at 15, 18-19; GE 4 at 4, 5: AE A at 1, 2; AE E at 11.)

Applicant also submitted an eight-page psychological evaluation performed by a licensed psychologist. His report is filled with factual statements that vary from the court-martial record summarized above. Most significantly, the psychologist makes no mention in his evaluation of the charges Applicant was convicted of in 1991. He only refers to the One-Time Home Visit as a violation of a restraining order that resulted in Applicant receiving a six-year prison sentence. The evaluation makes no mention of Applicant's continued sexual abuse of SD and his abuse of D3, a two-year old baby girl, after his 1987 Release. These omissions seriously undermine the persuasiveness of the psychologist's conclusion that Applicant "is fully rehabilitated from his crime of 30 years ago," that "he poses no risk of reoffending," that he "is not susceptible to blackmail based upon his prior offenses," and that he is "fit to hold a security clearance."(AE C at 8.)

Applicant testified that he has not engaged in any criminal behavior or sexual misconduct since 1991 when he was convicted and sentenced to confinement. He testified that he takes full responsibility for his actions against SD prior to 1987. He denies any misconduct, however, with respect to his two biological daughters, D2 and D3, notwithstanding the charges brought against him based upon the testimony of D2 and his

conviction with respect to D3. As noted, he also denies that the charges raised in the 1991 Court-Martial on the basis that they were the same charges he pleaded guilty to in the 1987 Court-Martial. (Tr. at 20, 26, 28-29, 52. 55-56.)

Policies

"[N]o 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 applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 15-01253 at 3 (App. Bd. Apr.20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

Analysis

Sexual Behavior

The security concern under this guideline is set forth in AG ¶ 12 as follows:

> 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 or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

The guideline at AG ¶ 13 contains five potentially disqualifying conditions that could raise security concerns. Two conditions apply to the facts found in this case:

> (a): sexual behavior of a criminal nature, whether or not the individual has been prosecuted; and
>
> (c): sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.

The record evidence established that Applicant committed serious acts of sexually molesting two children after his 1987 Release. Applicant strenuously denies the allegations. These criminal acts are so abhorrent that they leave Applicant vulnerable to coercion, exploitation, or duress. This is particularly true because Applicant has not taken responsibility for the serious sexual crimes he committed and of which he was convicted in 1991. He went so far as to misrepresent to the evaluating licensed psychologist the true reason for his four-year imprisonment. His testimony that he only visited his family home once to fix a car problem lacked any semblance of credibility in light of the record as a whole. The record evidence raises serious security concerns under the above

disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 14 contains four conditions that could mitigate security concerns arising from Applicant's sexual behavior. Two of the conditions potentially apply:

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

AG ¶ 14(b) is only partially established. Applicant's sexual behavior occurred many years ago. The behavior, however, is of such an extraordinarily shocking nature and occurred over a lengthy period of time involving minor children that it casts serious doubts about Applicant's current reliability, trustworthiness and judgment. Applicant's misleading attempts to deny and hide his conduct in the period after his 1987 Release is particularly troubling.

AG ¶ 14(c) is not established. Although Applicant's sexual behavior occurred a number of years ago, the seriousness of the nature of his sexual behavior renders it an ongoing basis for coercion, exploitation, or duress. This risk is emphasized by the fact that Applicant continues to deny any improper sexual behavior with SD and D3, notwithstanding his conviction for those crimes. Security concerns under Guideline D are not mitigated.

Guideline J, Criminal Conduct

The security concern under this guideline is set out in AG ¶ 30 as follows:

> 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.

The guideline at AG ¶ 31 contains five potentially disqualifying conditions that could raise security concerns. Two conditions apply to the facts found in this case:

> (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; and
> (e) discharge or dismissal from the Armed Forces for reasons less than "Honorable."

The record established by more than substantial evidence that Applicant committed the serious crimes of indecent acts against SD and D3. The doctrine of

collateral estoppel bars Applicant from denying that he committed the sexual crimes after his 1987 Release. AG ¶¶ 31(b) and 31(e) apply. The record evidence raises security concerns under these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 32 contains four conditions that could mitigate security concerns arising from Applicant's criminal conduct. Two of the conditions potentially apply:

> (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) is only partially established. Applicant's criminal conduct occurred more than 30 years ago. The conduct, however, did not occur under any unusual circumstances to suggest that the crimes would not have occurred had the circumstances been different. Whether such conduct might recur is speculative. I find the expert opinion of Applicant's evaluating psychologist to be of limited usefulness because he did not consider the highly relevant fact that Applicant was found guilty of new charges of indecent acts in the 1991 Court-Martial. Applicant's serious criminal conduct and his denial at the DOHA hearing of his conduct after his 1987 Release cast serious doubts on his current reliability, trustworthiness, and good judgment.

AG ¶ 32(d) is only partially established. A significant amount of time has passed since Applicant's criminal conduct and Applicant has not been accused of any further criminal conduct of any nature. Applicant served four years in prison. He has been employed with a U.S. defense contractor since 2002, and his employer supports his application for a security clearance even though he is aware of Applicant's serious past criminal conduct. On the other hand, Applicant's refusal to accept responsibility for all of his criminal conduct seriously undercuts all of his evidence of rehabilitation. Security concerns under Guideline J are not mitigated.

Whole-Person Concept

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d). These factors are:

> (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.

I have incorporated my comments under Guidelines D and J in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Some factors warrant additional comments. I have given weight to Applicant's military service over a number of years and his many years of highly valued work with his current employer. I have also considered the significance of the fact that Applicant's criminal sexual behavior occurred more than 30 years ago. All of this evidence, however, does not mitigate the seriousness of Applicant's behavior with his stepdaughter and his two-year-old birth daughter. A significant fact in this whole-person analysis is Applicant's present failure to accept responsibility for the crimes of which he was convicted in the 1991 Court-Martial. Overall, the record evidence as described above leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the disqualifying and mitigating conditions under Guidelines D and J and evaluating all the evidence in the context of the whole person, I conclude Applicant has failed to satisfy his burden to mitigate security concerns arising from his past sexual behavior and criminal conduct.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline D: AGAINST APPLICANT

Subparagraphs 1.a through 1.c: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Conclusion

In light of the entire record, I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to classified information. Clearance is denied.

John Bayard Glendon
Administrative Judge