



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



In the matter of:)
)
) ISCR Case No. 19-01398
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: Patrick Korody, Esq.

09/20/2021

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline D, sexual behavior; Guideline F, financial considerations; and Guideline J, criminal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On August 12, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines D, sexual behavior; F, financial considerations; and J, criminal conduct. The action was taken 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 adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on October 1, 2019, and requested a hearing before an administrative judge. The case was assigned to me on May 28, 2021. At the request

of Applicant's counsel, the hearing was scheduled for August 12, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 7, 2021. I convened the hearing as scheduled on the Defense Collaboration Services system. The Government offered exhibits (GE) 1 through 6. Applicant and two witnesses testified on his behalf. He offered Applicant Exhibit (AE) A through S. There were no objections to any exhibits offered, and all were admitted into evidence. DOHA received the hearing transcript on August 20, 2021.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.i, 1.l, 1.m, and 2.a. He denied the allegations in SOR ¶¶ 1.j, 1.k, and 3.a. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 30 years old. He married in 2012. His wife has two children from a previous marriage and relationship. Applicant adopted his wife's younger child. He and his wife have two biological children ages seven and six. He served in the military from 2010 until he was administratively processed in 2014 for serious misconduct and received a general discharge under honorable conditions. Applicant has worked for a federal contractor since 2016.

Applicant's wife's eldest daughter's (Daughter E) biological father is deceased. Daughter E was adopted by Applicant's wife's former husband when they were married. When they divorced, the father did not want to be part of Daughter E's life or pay child support for her. The judge required someone to be financially responsible for the child before severing parental rights and responsibilities. Daughter E was adopted by her grandparents in 2010, when she was ten years old. Daughter E had a close relationship with her grandparents.

Applicant was 20 years old when he married his wife in 2012. She is nine years older than Applicant. Daughter E was about 11 years old at the time they married. The younger child was five years old. Daughter E lived with Applicant and her mother after they married.

In September 2014, when Daughter E was 14 years old, Applicant's command was notified by Family Advocacy that Daughter E had reported that Applicant sexually assaulted her. An investigation was conducted. Daughter E reported the sexual assault to counselors at a hospital where she was a patient due to cutting her wrists and suicidal behavior. Daughter E reported that on one occasion, at their on-base residence, Applicant placed his hand down her pants, under her panties, and touched her vagina. She explained that while she and Applicant were wrestling, he "pinned" her while she was on her back and he was on top of her. He slid his hands down the front of her jeans and inside her panties. He did not penetrate her. She stated that he had also attempted to kiss her on multiple occasions and walked around the house naked. On one occasion, after she witnessed him naked, he sent her a text message that read "Your Welcome ;)" It had a "winking face" emoji next to the phrase. (GE 6)

A licensed clinical counselor from the hospital where Daughter E was a patient, stated that Daughter E told her about Applicant putting his hands down her pants while they were wrestling, but did not mention whether Applicant had placed his hands under her panties. Daughter E told the counselor that Applicant walked around the house naked. Daughter E did not discuss with the counselor that Applicant attempted to kiss her. Daughter E told the counselor that Applicant told her that he was falling in love with her. The counselor opined that Daughter E's suicide ideations and depression were more than likely resulting from Applicant's actions and their relationship. A search of Applicant's phone confirmed the text message stating "Your Welcome ;)." (GE 6)

Applicant was advised of his rights by investigators and admitted that he intentionally put his hands down Daughter E's pants after she fell on her back between the couch and wall inside the residence's living room. He admitted sending the text message after Daughter E saw him naked. He also stated that he accidentally touched Daughter E's breast on one occasion. (GE 6)

In February 2015, after consulting with an attorney, Applicant waived his right to a court-martial and accepted Uniform Code of Military Justice (UCMJ) Article 15 nonjudicial punishment. He was charged with violation of UCMJ Article 120b:

You, did at or near [military base], between on or about June 28, 2012 and on or about 13 September 2014, commit a lewd act upon [Daughter E], a child who had not attained the age of 16 years, to wit: placed your hand down the front of her pants and inside her underwear.

You, did, at or near [military base], on or about 15 August 2014, commit a lewd act upon [Daughter E], a child who had not attained the age of 16 years old, to wit: exposed your genitalia to Daughter E. (GE 6)

Applicant chose not to have a personal appearance before the Commander at his UCMJ Article 15 hearing, but rather submitted a written presentation. It was not provided at this hearing. The Commander found Applicant committed the offenses. Applicant appealed the Article 15, which was denied. The proceeding went through the appropriate reviews and was found to be in compliance with the Manual for Courts-Martial. Applicant was awarded a reduction in rate, 30 days extra duties, and a written reprimand. (GE 6)

Applicant was administratively processed for discharge from the service in April 2015 in the paygrade E-2. He received a general discharge under honorable conditions. The narrative reason for separation was "misconduct (serious offense)." (AE P)

Applicant was interviewed by a government investigator as part of his security clearance background investigation. He told the investigator that he did not purposely expose himself. He admitted that he may have inappropriately touched Daughter E by accident when they were playing and tickling, and she kicked him away. He stated he sleeps naked, and when the children are asleep he will walk around the house naked. He admitted sending the text to Daughter E, but said it was a joke. He was confronted with

whether he tried to kiss Daughter E, and he said only in a parental way and not in a sexual way. He said he felt the service investigators pressured him into changing certain words in his statement, such as “accidentally” to “intentionally.” He stated he was required to attend five or six counseling sessions through Family Advocacy before he was discharged.

In Applicant’s answer to the SOR, he stated that he sought counseling soon after the incident, as he was under immense pressure to provide for his family, continue his military service, and navigate the military justice system. He said Daughter E had come back to live with the family. He stated:

Since then this has been and will be the only incident to occur. Looking back I realize my mistakes and attribute my shortcomings to my lack of experience as a father figure do (sic) to my marriage at a young age as well as my lack of understanding for investigation proceedings, in which at the time of the incident declined a lawyer and was as compliant as I could be. I felt a lot of pressure from all around. I understand the importance of maintaining the role of father and aim to continue the role to the highest standards. My behavior was inappropriate and I have grown as a father, husband and person as a whole. I will continue to build myself and ensure there is no future incident.

I deny criminal allegations specified in [SOR] Item #3a. While my behavior may have been of serious concern, no criminal charges were file[d] in a military or civilian court. (Answer to SOR)

At his hearing, Applicant denied he intentionally exposed himself to Daughter E. He said he got out of the shower and assumed the children were sleeping. He was naked when he saw Daughter E. He admitted he sent her the text with a “winking face” emoji. He said he was being sarcastic and joking. He testified it was not appropriate. He stated that he never intentionally put his hand down Daughter E’s pants, but it was possible he inadvertently “touched her waistband.” He said they “hung out” and tickled and roughhoused with each other. He recalled roughhousing with her once and she kicked him and stormed off. Applicant stated Daughter E had behavioral problems. She was attending counseling at that time.

Applicant testified that he was afforded a right to consult with an attorney prior to accepting Article 15 nonjudicial punishment. At the time, he and his wife were separated. He had two small children that he had not seen. He said he was under a lot of pressure. Child Protective Services was involved. He stated this was a “period of regret” and he has grown from it. He now understands the limitations of a father and certain lines must be drawn. He testified none of his acts were intentional. He and his wife have since reconciled. Daughter E was sent to live with her grandparents.

Applicant testified that a few years later he and his wife discussed Daughter E returning to live with them. He stated that he had reservations, but agreed to it. He knew

he had a “clear line.” He changed his behavior around Daughter E and was cautious. She is now married, and he attended her wedding.

After being discharged from the service, Applicant was unemployed for a period and had financial difficulties. Between 2015 and 2017, he and his family relocated several times looking for job opportunities. They eventually decided to put roots down in their current location. From April 2015 to November 2016, Applicant worked overseas and sent money home to support his family. (GE 1)

Applicant’s wife testified that she was responsible for the family’s finances. After their last move, Applicant has been more involved with their finances. Their federal income tax returns were timely filed for 2015 and 2016. She believed that Applicant’s income that was earned overseas was not taxable. She said she was led to believe this as she processed their tax return through TurboTax. In approximately 2018, they were notified by the IRS that they owed income taxes. They did not have the money to pay the amount owed at that time. They were in contact with the IRS frequently over the past several years. She estimated about 30 times.

SOR ¶ 1.m alleges a federal tax debt of \$18,490 for tax years 2015 and 2016. Applicant provided a copy of a July 2019 installment agreement with the IRS, which required he pay \$150 a month for income tax owed for tax years 2015 and 2016, to begin in September 2019. Applicant provided documents to show he made the payments from September 2019 through January 2020, and March 2020. In June 2020, the IRS received notification that Applicant filed bankruptcy and in August 2020 the installment agreement was canceled. There is no record of a new installment agreement. Applicant made \$100 payments to the IRS in December 2020, January 2021, March 2021, and April 2021. In August 2021, he made a \$500 payment. Through the years, Applicant’s income tax refunds have been involuntarily captured and applied to non-IRS debts and also toward balances owed to the IRS. Tax transcripts also reflect that certain amounts owed were “written off” by the IRS. Applicant provided a copy of his 2020 federal tax return that reflects an anticipated refund of \$7,495. His tax return is being processed. He anticipates this refund will be applied to his delinquent tax debt and he will have a remaining outstanding balance of \$785. (GE 3, AE M; Answer to the SOR)

Applicant testified that he was aware of some of his delinquent debts, but thought some would fall off their credit report. After his discharge from the service, money was tight. In 2019, after he received the SOR, he became aware of other delinquent debts. He spoke with a lawyer, who was not aware of his security clearance issues. He was advised to file bankruptcy and not pay his debts. He was led to believe the IRS debt would be resolved through bankruptcy. After receiving other advice, he was made aware his tax debt would not be resolved through bankruptcy. The bankruptcy was dismissed at the request of Applicant. Many of the debts alleged in the SOR have been delinquent since 2013, 2014, or 2015. After receipt of the SOR in August 2019, Applicant began taking action. He withdrew money from his pension plan to pay the debts, which he determined would be his best option.

Applicant received a tax form 1099-C for tax year 2018 for the credit card debt in SOR ¶ 1.a (\$6,605). It is unknown if this amount was included in his tax return for 2018. (AE A, AE M; Answer to the SOR).

In September 2019, Applicant received confirmation that the debt alleged in SOR ¶ 1.b (\$5,520) was satisfied in full with the creditor. (AE B; Answer to the SOR)

Applicant provided a document from May 2018 showing a zero balance for the student loan alleged in SOR ¶ 1.c (\$3,392). It appears this debt may have been paid by the capture of his federal tax refund. (AE C; AE M; Answer to SOR)

Applicant settled the collection account in SOR ¶ 1.d (\$2,488) in August 2019. He satisfied the collection account in SOR ¶ 1.e (\$2,370) in October 2019. (AE D, AE E; Answer to the SOR)

Applicant stated in his answer that the debt in SOR ¶ 1.f (\$278) was charged off. He contacted the creditor and made a payment of \$20 toward the balance of the debt. He provided a copy of the money order. At his hearing, he provided a letter from the creditor dated July 2021 indicating that it was no longer attempting to collect the debt, and the amount was being written off. (AE F; Answer to the SOR)

Applicant satisfied the collection account in SOR ¶ 1.g (\$231) in September 2019. He paid in full the collection account in SOR ¶ 1.h (\$2,433) in October 2019. (AE G, AE H; Answer to the SOR)

Applicant settled the debt in SOR ¶ 1.i (\$1,746) for \$725 in August 2019. Applicant noted that the debts in SOR ¶¶ 1.i and 1.j were duplicates. I concur. Applicant stated that he was unable to find the creditor on his credit reports for the debt alleged in SOR ¶ 1.k (\$558). His attorney sent a letter to the creditor in July 2021 requesting it validate the debt. Applicant paid the outstanding balance owed on the collection account in SOR ¶ 1.l (\$377). (AE I, AE J, AE K; Answer to the SOR)

Applicant provided a copy of a budget. He provided military service evaluations from 2010 to 2015 that noted he was above average or truly among the best among his peers. He provided a character letter from his mother-in-law who describe him as a good husband and father, hardworking, patient, kind, trustworthy, honest, and responsible. Character letters from coworkers describe him as well-liked with a good reputation, talented, reliable, responsible, nice, professional, honest, and trustworthy. (AE O, AE Q, AE R, AE S)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating

conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

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

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file or fraudulently filing annual Federal, state, or local tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant had numerous delinquent debts that began accumulating in 2013. He was indebted to the IRS for delinquent taxes from tax years 2015 and 2016. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit

counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

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

Applicant began experiencing financial problems after his discharge from the service in 2015. However, some debts were delinquent prior to then. He worked overseas for part of 2015 and 2016, and his wife incorrectly believed his income was exempt from paying federal income taxes. In 2018, he was notified that he had a tax debt for those tax years. In 2019, Applicant had an installment agreement with the IRS. He made a few payments. The installment agreement was canceled when he filed bankruptcy in June 2020. Although he has made some independent payments towards his tax debt, primarily it has been paid through subsequent tax years' refunds and the IRS writing off balances owed. In addition, non-IRS debts have also been paid from tax refunds. Applicant did not begin to address his delinquent debts until after he received the SOR. Although, he stated he was advised to stop paying his debts when he filed bankruptcy, his debts were already several years delinquent at that point.

The timing of resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who takes action to resolve financial problems only after being placed on notice his or her clearance is in jeopardy may lack the judgment, and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. *See, e.g., ISCR Case No. 17-03229 at 4 (App. Bd. Jun. 7, 2019).*

Applicant was discharged from the service due to his misconduct. This was within his control. His subsequent unemployment was somewhat beyond his control. Applicant's tax issues were somewhat beyond his control because of his wife's mistaken belief that his overseas income was not taxable. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant did not begin to address his delinquent debts until after he received the SOR. Many of his debts were years old. He contacted the IRS to address his tax issues and had an installment agreement with them, but it was canceled when Applicant filed bankruptcy. Most of Applicant's tax debt has been paid by the involuntary application of subsequent tax years refunds. This does not constitute a good-faith effort to repay his tax debts. A final accounting to show he has resolved all of his tax debt was not provided. He testified he anticipated that his 2020 tax

refund would satisfy most of the remaining balance, but not all. At this point, that is speculative. Tax refunds for subsequent tax years have also been applied to non-IRS debts. Applicant has made some independent payments to the IRS, but they have not been consistent. Although Applicant has paid most of the debts alleged in the SOR, I am unable to find that he acted responsibly under the circumstances or that he made efforts to pay his debts until after he received the SOR. His actions continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) has minimal application.

There is no evidence Applicant received financial counseling or he disputes any debts. I find in his favor for the duplicate debt in SOR ¶ 1.i. AG ¶¶ 20(c) and 20(e) do not apply. Applicant had an installment agreement with the IRS, but it was canceled after he filed bankruptcy. He made some payments in 2020 and in 2021 to the IRS and is relying on a 2020 refund to satisfy most of his remaining tax debt, but apparently not all. AG ¶ 20(g) does not apply. I find that financial considerations concerns remain despite the presence of some mitigation.

Guideline D: Sexual Behavior

The security concern for sexual behavior is set out 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 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 sexual orientation of the individual.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 13, and the following is potentially applicable:

(a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted.

The evidence supports that Applicant committed a lewd act upon his stepdaughter, who at the time was under the age of 16 years old, by putting his hand down the front of her pants and inside her underwear. It also supports that Applicant exposed his genitalia to his stepdaughter, who at the time was under the age of 16 years old. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from sexual behavior. The following mitigating conditions under AG ¶ 14 are potentially applicable:

(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

(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 has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.

Applicant's sexual behavior towards his stepdaughter in approximately 2014 is not mitigated. He was a grown man at the time and in a parental custodial relationship with his stepdaughter. He has wavered regarding what he actually may or may not have done, but indicates his regrets. As a 23-year-old, walking around the house naked with young girls in residence is not a sign of immaturity, but rather a display of inappropriate conduct. This is clearly evident when he sent his stepdaughter the text message and emoji. His statement that he now understands the limitations of a father and certain lines must be drawn alludes to some inappropriate behavior. He testified none of his acts were intentional. I did not find his testimony credible. Applicant's conduct casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 14(b) does not apply. Applicant was ordered to attend some counseling through Family Advocacy before his military discharge. His minimal counseling is insufficient and AG ¶ 14(e) does not apply.

Guideline J: Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 31, and the following is potentially 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.

Applicant received Article 15 nonjudicial punishment after being charged with two specifications of UCMJ Article 120b, committing a lewd act on a child under the age of

16. He did not demand a court-martial and was found guilty of the acts. He was subsequently administratively processed from the service for serious misconduct, and received a general discharge under honorable conditions. The evidence is sufficient to conclude that Applicant committed the conduct. His statements and quasi-admissions that allude to inappropriate conduct without actually saying what he did provide sufficient corroboration. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

(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;

(c) no reliable evidence to support that the individual committed the offense;
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.

The same analyses that were detailed under the sexual behavior guideline apply under the criminal conduct guideline. Applicant's conduct casts doubt on his reliability, trustworthiness, and good judgment. Although there is some evidence of rehabilitation, it is insufficient to mitigate the security concerns. The above mitigating conditions do not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines D, F, and J in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 30 years old. I have considered his work performance and character evidence. He has an unreliable financial track record. He failed to meet his burden of persuasion regarding his past criminal conduct and sexual behavior. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guidelines D, sexual behavior; F, financial considerations; and J, criminal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Paragraph 2, Guideline D:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge