



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



In the matter of:)	
)	
)	ISCR Case No. 20-01888
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Adrienne Driskill, Esq., Department Counsel

For Applicant:
Alan V. Edmunds, Esq.

March 21, 2022

Decision

GLENDON, John B., Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on January 18, 2019. On April 30, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines D (Sexual Behavior) and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR (Answer) on May 26, 2021, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October

5, 2021. The case was assigned to me on October 12, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 1, 2021. The case was heard as scheduled on December 3, 2021. DOHA received the transcript of the hearing (Tr.) on December 8, 2021.

At the hearing the Government offered Government Exhibits (GE) 1 through 4, which were admitted without objection. In the absence of any objection, I agreed to take administrative notice of a fifth document (GE 5) presented by Department Counsel, which was a state statute that is relevant to one of the SOR allegations. Applicant testified on his own behalf and submitted Applicant Exhibits (AE) A through S, which were also admitted without objection. I asked the counsel for both parties to submit briefs on a legal issue raised by Applicant's counsel. Applicant's brief was submitted on December 15, 2021, Department Counsel's submitted the Government's reply brief on December 20, 2021. The record closed on that date.

Findings of Fact

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

Applicant is 61 years old. He lives with his wife, who he married three years ago. She is a retired school teacher. She has two adult children from a prior marriage. Applicant earned a bachelor's and a master's degree. He works for a defense contractor as a senior engineering manager. (Tr. at 10-11, 17, 21, 36-37, 53, 55, 57, 60; AE B; AE M.)

Applicant enlisted in the U.S. Navy in 1978 at the age of 18. He went to Captain's Mast in 1981 for disrespecting his commanding officer, punching a chief warrant officer, assault, communicating a threat, and disobeying orders. In his background interview, Applicant said he did not recall the details of the incident and only volunteered that he had been late and was belligerent and/or yelled at his captain. When confronted with the Government's available details, he disagreed with the assault allegation and thought the incident was just a verbal altercation. The investigator's information reflected that Applicant was required to serve three months in detention prior to his discharge in 1982. The character of his discharge was Other than Honorable. He was also reduced in paygrade to E-2. (GE 2 at 9.)

Applicant has one child, a daughter, who was born in 1982. He did not marry his child's mother, and he did not raise his daughter, though he paid her mother child support. In the past 15 years he has developed a paternal relationship with his daughter, now age 29. She has two minor children. (Tr. at 10-11, 17, 21, 36-37, 53, 55, 57, 60; GE 1 at 20-26; GE 2 at 4; AE B; AE N.)

After the birth of his daughter, Applicant married another woman in about 1982, shortly after his discharge from the Navy. At the time of that marriage, Applicant's first wife had two minor children, a girl and a boy, from a prior marriage or relationship. Applicant's former stepdaughter (Stepdaughter 1) was born in about 1977 and his former stepson was born in about 1976. Her mother legally changed Stepdaughter 1's last name to Applicant's last name, though he never formally adopted her. In about 1993, Applicant moved out of the marital home. He and his first wife divorced in about 1995 or 1996. (Tr. at 21, 32-33, 36, 38, 40, 56-57, 59, 61-62.)

In about 1996 Applicant married his second wife. She also had two children, a boy and a girl, who were teenagers at the time of the marriage. Applicant and his second wife divorced in about 2006. (Tr. at 59.)

In January 1993, Applicant was arrested for driving under the influence of alcohol (DUI). In December 1993, he pleaded guilty to the charge, a misdemeanor, and was sentenced to five years of probation, to end in December 1998. This offense is not alleged in the SOR. (GE 4 at 4.)

Paragraph 1 (Guideline D, Sexual Behavior)

Under Guideline D, the Government alleges in SOR ¶ 1.a (and cross-alleges in SOR ¶ 2.b, discussed below) that Applicant is ineligible for a clearance because he was arrested in 1995 and charged with Lewd or Lascivious Acts with a Child under 14. Following a plea, he was sentenced to one year in jail, which was "stayed," placed on probation for three years, and ordered to register as a sex offender. Applicant denied these allegations in his Answer, stating that the allegation was inaccurate.

In 1995 the daughter of Applicant's first wife (the Stepdaughter 1) accused him of sexually molesting her over a period of several years. Applicant testified that he believed she was about 13 years old at the time of the first allegation of abuse. According to an official state document in the record, Stepdaughter 1 reported the abuse began in 1988. She would have been about 11 years old at that time. She was about 18 when she filed criminal charges against Applicant. He was arrested on April 4, 1995, and charged with nine felony counts of Lewd and Lascivious Acts involving Children under the state penal code. Applicant claims he has no recollection of "the details" any of the events of which he was accused over a multi-year period starting in 1988, though he does not deny "something may have happened." He testified that his lack of any memory of these events was due to his excessive alcohol drinking habits during that period. (Tr. at 28-36, 39-40, 42, 55; GE 2 at 5; GE 4 at 1; GE 5 at 1.)

According to SOR ¶ 1.a, Applicant pled guilty to committing lewd and lascivious act(s) with a minor, and he was sentenced to one year in jail (stayed), placed on three years of probation, and required to register as a sex offender. Applicant claimed that he actually pled *nolo contendere* (no contest) to one charge, and the other charges were

dismissed. The Government presented no evidence to contradict Applicant's characterization about his plea. (Tr. at 22; GE 2 at 5.)

Applicant gave several explanations for why he pled no contest to one of the charges against him. He testified that he wanted to avoid a trial. At another point, Applicant explained that he pled no contest to one charge because he had no recollection of the sexual abuse that he was accused of committing. (Tr. at 11, 19-27, 29, 45-50, 93; GE 2 at 5; GE 4 at 1.) In his post-hearing brief, his lawyer acknowledged that Applicant pled to one of the charges "to avoid more punishment if he was found guilty at trial." (Applicant's Brief at 1.)

As part of his probation sentence, the court ordered Applicant to participate in three years of group therapy. Applicant testified that he extended the therapy an extra two years voluntarily because he was "helping others." He claimed that as part of his therapy, he voluntarily was tested to determine if he was a pedophile and the test results were negative. He also voluntarily attended Alcoholics Anonymous and Sex Addicts Anonymous meetings. (Tr. at 11, 19-27, 29, 45-50, 93.)

Applicant noted further in his e-QIP that the "Charges [were] Expunged" in about October 1995. At the hearing he provided a July 18, 2008 court document that stated: "Case dismissed and conviction expunged" pursuant to a state statute that permits a court to take such action following the successful completion of probation. An accompanying court order provided further that there were significant exceptions to the order of expungement, including a requirement that the original conviction be disclosed in response to questions in state questionnaires or applications and that "the conviction in this case remains a part of the court file which can be viewed by the public." (GE 1 at 33-34; AE Q at 1-2.)

Applicant also provided an October 26, 2021 letter from his state's sex offender registry office, in response to Applicant's request for a review of his registration requirements. The State registry office indicated that it had changed his status to a "Tier 2-Adult," which meant that he is eligible to petition for the termination of his registration requirement under certain conditions. As of the close of the record in this case, however, Applicant remains a registered sex offender, as evidenced by his Proof of Current Registration, also dated October 26, 2021. (AE S at 1, 3.)

Applicant testified that his therapist from his post-conviction time period emphasized that he should focus on moving forward and learning from his mistakes. Applicant provided no further information about his discussions with his therapist regarding what his past mistakes were and what he was supposed to learn from them. This is significant because Applicant claims that he recalls nothing about any incident of sexually abusing Stepdaughter 1, including the incident to which he pled *nolo contendere*. He testified: "I try not to remember that." (Tr. at 24-26.)

Paragraph 2 (Guideline E, Personal Conduct)

In this paragraph the Government alleges that Applicant is ineligible for a clearance because he has falsified material facts during the clearance screening process. Specifically, the SOR alleges that Applicant provided false information by failing to disclose his daughter and two current stepdaughters in his e-QIP. Applicant denied the allegation(s) under this paragraph in his Answer, stating that the omissions were not deliberate. The SOR also cross-alleges under Guideline E the allegation under Guideline D regarding the 1995 criminal charges of Lewd and Lascivious Acts with Children, his plea, and his sentence. He did not respond separately to this allegation in his Answer.

Applicant did not list his daughter or his two stepchildren on his e-QIP. He initially explained in his background interview that he failed to list them due to oversight. At the hearing, he admitted that he omitted his daughter and two stepchildren because he did not want them to become involved in his background investigation. I note that he also did not list either his first or second wife in response to the relevant question in Section 17 of his e-QIP. His first wife was the mother of Stepdaughter 1, who accused Applicant of molesting her. He answered negatively to the question of whether he had one or more former spouses. (GE 1 at 20-26; GE 2 at 4.)

At the hearing, Applicant explained the omissions of family members and former spouses in his e-QIP was due to fact he did not want his daughter or his current stepchildren to be interviewed in connection with his security clearance investigation. He was particularly concerned about his daughter being contacted by Government investigators. (Tr. at 28-36, 39-40, 42, 55.)

In his background interview, Applicant advised the investigator about his daughter and two stepdaughters, as well as his two prior wives. He told the investigator that he would provide their names and information at a later date. He subsequently called the investigator and declined to provide the information. He said that he was afraid that the individuals would be contacted and interviewed regarding his criminal record. He also said he was concerned that his employer would find out about his history and that would put his employment in jeopardy. The next day he provided the information about his daughter and two stepdaughters to the investigator. He repeated that his child and stepchildren were not listed in his e-QIP due to oversight. (GE 2 at 4, 8-10.)

At the hearing, Applicant was questioned about his statements about these family members during his background interview. He testified:

The oversight was made because I was trying to protect my natural daughter, and to be honest, I didn't think I would get the – I was trying to delay the process of the application.

(Tr. at 63.) He was also questioned whether his daughter was aware of the accusations against him, the court proceedings, and his status as a registered sex offender. His response was: "Not in detail." His two current stepchildren know a limited amount about his criminal history. He testified: "Beyond that, I try to keep it in the past and not bring it up." (Tr. at 63-65, 76-80.)

In his 2019 e-QIP, Applicant also disclosed limited information about his 1995 arrest and charges. In response to a question in Section 22 regarding Police Record asking for "a description of the specific nature of the offense," Applicant wrote "PC 290 offense." This reference is to the state sex registration statute, not the criminal statute he was charged with violating, *i.e.*, Penal Code Section 288(a). At the hearing, Applicant said: "I figured that [response] would suffice." He denied that he was trying to hide the true nature of his felony offense from his security manager or employer by not giving more specific information as required by the question. He thought it was best not to elaborate on his criminal record. As far as Applicant knows, no one at his employer is aware of his criminal record. (Tr. at 66-67, 78-79; GE 1 at 33-34.)

In addition, in detailing his 1993 DUI offense on his 2019 e-QIP, Applicant failed to disclose the dates of his probation as required by a specific question in Section 22 of the e-QIP. (GE 1 at 33; GE 2 at 5, 7; GE 4 at 4.) These omissions are not alleged in the SOR so I cannot consider them as disqualifying conduct. (The DUI itself was also not alleged.) But I considered them in weighing mitigation and under the whole-person concept.

Mitigation

Applicant testified that he makes an effort to stay away from children when he can. For instance, he and his wife do not babysit any grandchildren. He has made this choice to be conservative and to avoid the possibility of any accusations against him or any troubling perceptions. Under his ongoing status as a registered sex offender, he is not allowed to work in schools or other jobs that involve contact with children. (Tr. ??)

Applicant is not involved in any kind of therapy. He testified that he occasionally goes to church. The focus of his court-ordered therapy in the 1990s was on issues related to sexual attraction to children, specifically family sexual abuse. It was not alcohol addiction therapy. He drinks alcohol occasionally, but he claims he never drinks to excess. The last time he drank excessively was more than 20 years ago. His focus is on moving forward. (Tr. at 61-63, 68-71, 75-77.)

In the years since his Other than Honorable discharge from the Navy, Applicant has educated himself and has had a successful career. He presented his recent performance evaluations, which show that he is well-regarded by his employer. He earns about \$170,000 annually, and receives bonuses every year of \$16,000 to \$20,000. (Tr. at 74-75; AE A-D; AE D.)

Policies

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

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline D, Sexual Behavior)

The security concerns relating to the guideline for sexual conduct are set out in AG ¶ 12, which reads in pertinent part:

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.

AG ¶ 13 describes three conditions that could raise security concerns and may be disqualifying 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 a lack of discretion or judgment.

Applicant denied SOR ¶ 1.a. The Government, therefore, has the burden of proof to establish it. Applicant was charged with Lewd or Lascivious Acts involving Children based on Stepdaughter 1's allegations. Applicant has raised a question whether there is sufficient corroborating evidence that he engaged in the behavior Stepdaughter 1 claims and for which he was arrested and charged. He does not deny the behavior, but he also does not admit it. The existence of the charges alone is evidence that the police and the prosecutor had concluded that there was probable cause to charge Applicant with the crime of sexually abusing Stepdaughter 1. Of course, AG ¶ 13(a) does not even require evidence of a prosecution.

At the hearing, Applicant's counsel argued that under the law of the state where the alleged abuse occurred, Applicant's plea of no contest did not result in a conviction and a finding of guilt, notwithstanding the fact that the criminal court pronounced a sentence of one-year imprisonment, which was stayed, and a period of probation, as well as other requirements. This is relevant because Applicant did not admit any criminal conduct when he pled no contest to one of the criminal charges. I granted Applicant's attorney the opportunity to submit post-hearing a brief in support of his legal argument, and I gave Department Counsel the opportunity to submit a reply brief. (Tr. at 42-45.)

The legal issue briefed by the parties relates to the significance of a court in Applicant's state accepting a plea of *nolo contendere*. Applicant relies heavily upon a 1970 appellate court decision in that state that holds it is legally permissible for a criminal defendant to plead *nolo contendere* to a criminal charge without admitting the factual basis of the charge to which he is pleading. The decision involved a *nolo contendere* plea to a charge different than the original charge the defendant faced so that he would be eligible for a lesser punishment. The court also held that it was appropriate for the state court to accept the plea, find the defendant guilty, and impose a sentence. I note that Applicant pled *nolo contendere* to one of the multiple charges filed against him, not a different charge. In any event, the state court properly accepted, pursuant to this authority, Applicant's plea of *nolo contendere* to one of the charges against him, found him guilty of that crime, and sentenced him.

Both Applicant's Counsel and Department Counsel cite to the same state statute (the Statute) regarding pleas of *nolo contendere*. The Statute reads as follows: "upon a plea of *nolo contendere*, the court **shall** find the defendant guilty. The legal effect of such a plea, to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes." (Emphasis added.) I note that Applicant's brief quotes additional language in the Statute that imposes limits on the collateral use of a *nolo contendere* plea. That statutory provision, however, is inapplicable because it explicitly applies only to non-felony cases. Applicant pled *nolo contendere* to a felony charge. (Applicant's Brief at 7; Department Counsel Brief at 2.)

Applicant's counsel appears to argue that his client's plea of *nolo contendere* cannot be used to establish that he committed the underlying criminal conduct. At the hearing, he argued further that under the applicable state law, a court can accept a *nolo contendere* plea and impose a sentence, but does not actually "convict" the defendant. He does not repeat that argument in his extensive brief. By citing the Statute, Applicant's Counsel is limiting his argument to make a simpler point that Applicant's plea of *nolo contendere* plea cannot be used against him. Applicant's brief no longer argues that he was not convicted of the crime to which he plead *nolo contendere*. The relevant legal issue, therefore, is the significance of the state court finding of Applicant's guilt and conviction for the crime to which he pled *nolo contendere*.

It is important to note that Applicant's brief cites no DOHA law in support of his argument. Under DOHA case law, Applicant's conviction is indisputable proof that he committed the crime of Lewd or Lascivious Acts involving Children. ISCR Case No. 15-08527 at 3 (App. Bd. Jan. 2, 2018); ISCR Case No. 04-05712 at 5-6 (App. Bd. Oct. 31, 2006). It does not matter whether the conviction is after a jury trial in which the defendant proclaims his innocence, after a guilty plea where the defendant admits his guilt, or after a plea of *nolo contendere* where the defendant does not admit or deny his guilt. The conviction results in the application of the doctrine of collateral estoppel, which means that Applicant cannot claim that there is no evidence that he committed a crime of sexually abusing Stepdaughter 1. As discussed below under the Analysis section of this decision regarding the mitigating conditions, Applicant's failure to acknowledge his actions at the

hearing has significant consequences in that it establishes that he has not taken responsibility for his actions, as argued by Department Counsel in her brief. (Department Counsel Brief at 2, 5.)

I find that security concerns under AG ¶ 13(a) were established by a preponderance of the evidence in this record. This is based on the fact that he was prosecuted for the offense of committing lewd and lascivious acts with a minor, pled no contest to that felony, and as part of his sentence was required to register as a sex offender – a registration status that is ongoing.

Concerns under AG ¶ 13(c) are also established by substantial evidence. Applicant took extreme steps in the preparation of his e-QIP to protect his extended family members and employer from becoming involved in the investigation of his eligibility for a security clearance, including omitting relevant information about his family, his former wives, including the mother of Stepdaughter 1, and the specific nature of the felony charges against him. His past actions and conviction of a felony of this nature is highly embarrassing and still renders him vulnerable to coercion, exploitation, or duress.

In addition, concerns under AG ¶ 13(d) were raised, because the charges involved Stepdaughter 1, a member of his own family at that time. Sexual involvement with a minor and a family member unquestionably reflects a lack of judgment on Applicant's part.

The evidence establishing these disqualifying conditions shifts the burden to Applicant to mitigate those security concerns. The guideline includes three conditions in AG ¶ 14 that could mitigate the security concerns arising from Applicant's alleged sexual behavior:

- (b) the sexual behavior happened so long ago, so infrequently, or under such 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; 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.

Although the sexual behavior happened many years ago, Applicant's failure to acknowledge his serious sexual misconduct with Stepdaughter 1 when she was a minor casts serious doubt about his current reliability, trustworthiness, judgment, and current willingness to comply with laws, rules, and regulations. ISCR Case No. 09-00266 at 4 (App. Bd. Jan. 26, 2012; ISCR Case No. 08-03620 at 3 (App. Bd. May 6, 2009). Also, his

attempt to blame his lack of any memory of his misconduct on being intoxicated at the time is simply not credible. In fact, I found much of his testimony on the important facts of this case to lack credibility, based upon his demeanor and his desire to shield his daughter and stepdaughters from the details of his past criminal conduct. He testified repeatedly that his former therapist encouraged him to move on from his past mistakes. That advice does not, however, excuse his lack of candor in acknowledging those mistakes – especially when his actions constitute severe misconduct and a serious breach of trust that he owed Stepdaughter 1, who carried his last name.

As noted, Applicant remains deeply concerned about his daughter learning about the full extent of his past misconduct. He also did not want an investigator to interview other family members and those at his place of employment about his felony conviction. He is afraid that his past will come back and damage him. As a result, he remains vulnerable to coercion, exploitation and duress. Furthermore, it cannot be said that his past treatment was successful if he never reached the point of acknowledging his crime against Stepdaughter 1 and the damage his actions caused her. Significantly, he has not provided a favorable prognosis from a qualified professional that shows that he has truly faced up to and owns his past criminal behavior. The ongoing nature of the risk he poses generally is also evidenced by the requirement that he register annually as a sex offender. His state does not fully trust him in society. For all these reasons, no Guideline D mitigating conditions are established.

Paragraph 2 (Guideline E, Personal Conduct)

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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 investigative or adjudicative processes.

AG ¶ 16 describes two conditions that could raise security concerns and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(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.

Both of the above disqualifying conditions have been established. Applicant deliberately omitted his daughter and his current stepchildren, when preparing and certifying the truth of his e-QIP, because he did not want them to be interviewed about his past criminal conduct. His other significant omissions in the e-QIP further evidence the deliberate nature of the falsifications identified in the SOR. He was dishonest in his e-QIP and continued to be dishonest at the hearing, all for the purpose of avoiding a close examination of his past actions.

The facts alleged under Guideline D also establish the disqualifying conditions set forth in AG ¶ 16(e)(1). It is evident that Applicant is very concerned that various past and present family members, and his employers, will become aware of his conviction and ongoing sex offender registration to the detriment of his personal, professional, and community standing.

The guideline includes three conditions in AG ¶ 17 that could mitigate the security concerns arising from Applicant's alleged falsification:

(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; and

(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 contribute to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

None of the above mitigating conditions have been established. Applicant initially failed to provide requested information to the investigator regarding the identity of his daughter and current stepdaughters. He later acknowledged that his omissions were deliberate. He said that he was afraid that the individuals would be contacted and interviewed regarding his criminal record. He also said he was concerned that his employer would find out about his history and that would put his employment in jeopardy.

Applicant ultimately provided the omitted information, but that action was not a prompt, good-faith effort to correct his falsifications. The omissions were not minor and were recent. It is likely that Applicant will continue to take actions to hide his past conduct from his employer and family.

Applicant has not acknowledged his behavior. Applicant presented his counseling as not having focused on his past mistakes. Instead, the counselor encouraged him to move forward. The available evidence cannot be viewed as having established successful rehabilitation that would make future recurrence unlikely.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has not mitigated the concerns regarding his sexual behavior and personal conduct. By not acknowledging his past sexual behavior, he has not established successful rehabilitation nor has he minimized the potential for pressure, coercion, or duress. His repeated instances of lack of candor, both in his e-QIP and at the hearing, raise serious questions about his character, trustworthiness, and judgment. Overall, the record evidence leaves me with questions and doubt as to Applicant's suitability for national security eligibility and a security clearance.

Formal Findings

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

Paragraph 1, Guideline D:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant

Conclusion

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

John Bayard Glendon
Administrative Judge