



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



In the matter of:)
)
) ISCR Case No. 22-00002
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: I. Charles McCoullough, III, Esq.

04/13/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns under Guideline K (handling protected information), but he did not mitigate the security concerns under Guidelines D (sexual behavior) and E (personal conduct). Eligibility for access to classified information is denied.

Statement of the Case

On February 18, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E, D, and K. Applicant responded to the SOR on March 24, 2022, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on October 5, 2022, and reassigned to me on December 8, 2022.

The hearing was convened as scheduled on December 9, 2022. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and relied on the documents attached to the SOR, identified as Tabs A to N. He did not submit any additional documentary evidence.

Findings of Fact

Applicant is a 57-year-old employee of a defense contractor. He has worked for his current employer since about June 2018. He earned a bachelor's degree in 1988. He is married without children. (Transcript (Tr.) at 45, 49-50, 103; Applicant's response to SOR; GE 1)

Applicant worked as a civilian employee of the U.S. military from 2007 until he resigned pursuant to a settlement agreement in April 2018. He became a branch head in about early 2016. He had supervisory responsibilities within the section (e.g., technical, personnel, facilities, etc.). He coordinated and provided funding on the contract for contractor personnel, and he provided feedback to the contracting officer representative (COR) on contractor performance. (Tr. at 47-51, 105-107; Applicant's response to SOR; GE 1, 2)

In October 2017, a female contract employee (Ms. A) contacted the labor and employee relations office to report inappropriate, uncomfortable and physical touching and comments made by Applicant. An investigation was conducted, and a report was issued in November 2017. (GE 2)

Ms. A was a single mother of two who had never worked outside the home before this job. English is her second language. She started working as a contract employee at the defense facility in about May 2016. She remained after another company took over the contract in December 2016. She held a security clearance for her job. (Tr. at 56, 108; GE 2)

Ms. A worked in a cubicle outside Applicant's office. She reported that Applicant made repeated inappropriate suggestions and hugged her, which she perceived as uncomfortable and inappropriate. She was concerned about her financial security, and he told her that he was responsible for her salary because he managed her contract. He promised that he would help convert her to a government employee. (GE 2)

Ms. A reported that about six months into her employment, Applicant started hugging her; asking her to turn full circle, commenting "nice" while nodding his approval at her appearance; asking her to long lunches away from work; and closing his door when he called her into his office. She stated that she was initially not offended by the hugs, but they eventually made her uncomfortable. She voiced her objections to him, but the comments and hugs continued. She stated that when she refused his hugs, he became irritated, yelled at her, and often criticized her work. (GE 2)

Ms. A stated that Applicant called her on November 4, 2016, and asked her to meet him at a restaurant for lunch. She drove to the restaurant, but it was closed. He drove them both to another restaurant where they had lunch. They walked around after lunch. He then drove her to the airport and parked. He said that he liked to watch the planes take off. While there, he asked her if she wanted to be his girlfriend. She told him no, and that she thought of him as a good boss and nothing more. He then got red and appeared angry. She asked him to drive her to her car so that she could go back to

work. Afterward, she called a friend who told her to document everything that happened. She maintained a notebook about his subsequent actions. That is how she was able to identify specific dates. (GE 2)

The investigator noted that a Google Maps search indicated an average drive time of 42 minutes from the facility to the restaurant; 22 minutes from the restaurant to the airport; and 32 minutes from the airport to the facility. I believe the times to and from the airport may be a bit skewed because it indicates travel to the airport when Applicant indicated that they were in a parking area by the airport. He stated the trip from the facility to the restaurant was about 30 minutes, and the airport is on the way. Travel times can vary greatly based on time of day and traffic conditions. I accept Applicant's travel times. The investigator noted that Applicant signed into the facility at 0705 on November 4, 2016, and signed out at 1705. (GE 2)

Ms. A reported that on November 7, 2016, Applicant called her into his office and invited her to his home when his wife was not home, so that they could talk. She stated that she told him no, and that it was not appropriate. She felt uncomfortable but did not tell him. She just changed the subject. (GE 2)

Ms. A reported that on November 21, 2016, Applicant called her into his office and stated that because of the Thanksgiving holiday, he would not see her for a few days, and that he wanted to hug her. The hug made her uncomfortable. He made "weird" sounds similar to moaning, and he started to shake or shimmy. The following week, she told him that the hugs made her uncomfortable, and she asked him to stop. He apologized and said he knew that he should not hug her, but he could not control himself. (GE 2)

Ms. A stated that in the middle of the day in late 2016 or early 2017, Applicant asked her to go with him on an errand to buy a flag. He bought a flag and surprised her on the way back to the facility and drove to his home. He asked her to come in and see his Christmas tree. She refused and asked him to take her back to work, which he did after about ten minutes. (GE 2)

Ms. A reported that on January 4, 2017, Applicant asked her to lunch. He asked her to meet him at the stop sign around the corner of their building so that no one would see them leave together. (GE 2)

Ms. A stated that in March 2017, Applicant called her into his office and told her that he was responsible for funding her salary. He showed her on his computer how he added funding to her contract. On one occasion after refusing a hug, he told her that he had been a contractor once and was laid off. He suggested that she prepare a resume in case it ever happened to her. (GE 2)

According to Ms. A, in March 2017, Applicant told her that he learned her address from her resume and drove by her home while he was visiting a shooting range in her vicinity. He told her how many telephone poles were on her street. He invited her to go with him to a shooting range by her home. (GE 2)

In May 2017, Ms. A texted Applicant that she wanted the hugs and meetings behind closed doors to stop. He did not hug her again or talk to her with the door closed, but he continued to ask her to lunch. He responded to her text:

Not a problem at all! I'm sorry you felt uncomfortable. I only gave you a few hugs as a friend because you did that to me first and because you told me you were absolutely ok with it. Also, I was not upset the other day because of this at all. I'm glad you told me! I want you to be completely comfortable and happy. (GE 2)

Ms. A reported that in about June 2017, she shared her problems with the employee (Ms. X) in the next cubicle. She asked Ms. X not to tell anyone for fear it would get back to Applicant. When questioned in the investigation, Ms. X reported that in the summer of 2017, Ms. A walked over to her. She was visibly crying and upset about something that happened between her and Applicant. Ms. X denied knowing anything about why Ms. A was upset. (GE 2)

Ms. A also shared her problems with her COR, who responded with a text on about June 16, 2017:

Good Morning [Ms. A], this is [COR's first name] so lock my number in your phone. How are you doing today? I was thinking about our conversation we had yesterday and I have been thinking . . . DO NOT go to lunch with him anymore unless it's in a group setting. Remember to document everything that happens no matter how small it might be. Also, [Ms. X] said you don't want information shared so I'm not going to say anything BUT if it gets to the point where it's unbearable and you need to take action then I have someone for you to talk to. I know she's open and will help you. We can discuss later when you're not in the office if you want. Don't let this stress you to the point you end up getting sick. Stress is a silent killer. (GE 2)

On July 13, 2013, Applicant emailed the resumes of 16 job applicants to Ms. A with the instructions, "Please print these resumes out for me, and sort them according to the order in which you think I will be most interested. The sort criteria should be: technical relevance followed by personality (looking for mature, determined people)." The resumes contained personally identifiable information (PII), and the task was outside Ms. A's scope of employment and need to know. (GE 2)

Ms. A was informed by Applicant on September 8, 2017, that her contract was not being renewed. She was given the option of coming to the facility or teleworking until the end of the contract in October 2017. (GE 2)

Ms. A engaged in a series of texts with the COR over the weekend (September 8 and 9, 2017). The COR agreed to meet her on Monday. (GE 2)

In September 2017, Applicant drove to meet with the president of the contracting company that employed Ms. A. He did not inform the COR of the meeting, and he did not have the authority to interact with the president of the company. (GE 2)

On September 14, 2017, Applicant sent an email to the president of the contracting company. He dictated tasks to be assigned to Ms. A that she could complete off-site. The COR was not copied on the email. (GE 2)

On September 19, 2017, Ms. A emailed Applicant and the president of her company. She wrote that she would like to work in the facility in October 2017 instead of teleworking. (GE 2)

On September 20, 2017, Applicant sent an email to the president of the company:

[President's first name]; I can't dictate this, as you know, but for informational purposes only, my preference would be to stay with the original plan (i.e.. telework in October: in which case [Ms. A's] last day on site would be 29 Sep 17). Please let me know how you will approach this. Any communication on [Ms. A's] schedule will need to come from you. (GE 2)

On September 28, 2017, Ms. A went to the division head (Mr. B), who was Applicant's supervisor, and presented him with a three-page document containing her interactions with Applicant. She stated that she reached out to the Equal Opportunity Employment (EEO) office and asked hypothetically what would happen if someone filed a claim such as hers. She was told the information would be reported to the department head (Mr. B's supervisor) and Mr. B. Ms. A stated that she did not want that to happen, as she wanted the issue to remain between her and Applicant. Mr. B responded that by bringing the information to him, he had a responsibility to report it. He asked her if she did not want to escalate the situation, why she brought the issue to him. She replied, "I really want a job." He told her to telework for the rest of the week. (GE 2)

Mr. B spoke with Applicant about Ms. A's statement. Applicant's initial reaction appeared to be a combination of shock and embarrassment. He denied asking her to be his girlfriend and going to her home. He admitted going to lunch with her and giving and receiving hugs. He denied having any romantic interest in her, stating that he was happily married. (GE 2)

Mr. B reported that Applicant came to him and suggested that Mr. B have Ms. A's common access card (CAC) pulled after she was notified that her contract would come to an end. Applicant told Mr. B that he was concerned that Ms. A would be emotional about losing her job and might consider sabotage, because high-level private-sector employees sometimes do that when they lose their job. Applicant also stated that it would prevent Ms. A from coming through the gate and becoming disruptive. Mr. B stated that pulling Ms. A's CAC would not be appropriate as she needed it for her job, and there was no indication that she was a threat. (GE 2)

Mr. B reported that he had known Applicant to be even tempered and very professional. The contract associated with Ms. A was scheduled to end in November 2017. There was no plan to renew the contract due to the lack of available funding, and about 10 to 11 months earlier, the division hired a full-time government administrative support person who could handle some issues that Ms. A, as a contract employee, could not. He stated that he had heard from Applicant and the administrative officer that Ms. A's work performance was not up to standard. Ms. A was informed that her contract would be coming to an end. (GE 2)

The administrative officer was interviewed for the investigation on October 4, 2017. She did not report any problems with Ms. A's work, indicating the only comment she heard from any employees was that Ms. A was talkative. She had not heard any negative comments from Applicant about Ms. A's work. Applicant informed the administrative officer that he was ending the support of the contract due to funding issues. (GE 2)

Applicant was interviewed for the investigation. The interview and his security clearance hearing testimony were consistent for the most part. He admitted that some of Ms. A's statements were true, and he vehemently denied others. He developed a "deeply personal" relationship with her. They discussed marital issues, financial problems, and their families. He realizes that he let the relationship progress beyond what he should have, but he stated that he had no romantic interest in Ms. A whatsoever, and much of what she alleged was false. He stated that he never asked her to be his girlfriend. (Tr. at 59-67, 73-74, 99, 120, 167-168; Applicant's response to SOR; GE 2)

Applicant stated that he hugged Ms. A as a friend about 8 to 12 times, but the hugs were never sexual in nature. He comes from a physically demonstrative family, and he hugs. He could not name another employee that he hugged behind closed doors. He completely denied any moaning sounds or shaking and shimmying when they hugged. He stated that Ms. A initiated some of the hugs and made him uncomfortable, but he hugged her to make her happy. In his February 2018 response to the notice of proposed removal, he stated that she told him in about September 2016 that she would not mind if he kissed her, to which he refused. He admitted in that response that they hugged at least two times after she told him that he could kiss her. He testified that he did not recall if he hugged her or invited her to lunch after she said he could kiss her. He could not recall if she asked him to stop the hugs before he received the May 2017 text message, but he stopped hugging her after the text message. He continued to ask her to lunch. (Tr. at 61-66, 121-124, 130; Applicant's response to SOR, Tab K; GE 2)

Applicant stated that he went to lunch with Ms. A about six times. He was asked why he drove the distance to the one restaurant. He stated that it was a nice restaurant, and they were both off the rest of the day, so the drive was less important. That was also why they had the time to stop by the airport. He stated they both drove to the restaurant and the lot outside the airport but sat in his car at the airport lot and talked. He admitted that he told her that he was having marital problems. The investigator reported that he stated that he told Ms. A that he was thinking about finding a girlfriend.

Applicant testified that he did not tell Ms. A that he was thinking about finding a girlfriend, and he did not remember telling the investigator that he said that. (Tr. at 68-69; 126-128, 151-153, 156-161, 165-166; Applicant's response to SOR; GE 2)

The investigator reported that Applicant signed into the facility at 0705 on November 4, 2016 (the date identified by Ms. A as when they went to the restaurant and airport), and signed out at 1705. Applicant testified that he never asked Ms. A to lunch while he was on leave and away from work. In Applicant's February 2018 response to the notice of proposed removal, he stated that he was on leave on November 4, 2016. (Tr. at 157-159; Applicant's response to SOR, Tab K; GE 2)

Applicant stated that he never asked Ms. A to come to his home, but he did drive Ms. A to his house after lunch in a spur of the moment decision. His house was not too far out of the way, and he drove by just so she could see the house. He is proud of his Christmas tree. He stated that he never planned to take her into the house, but he decided to ask if she wanted to come in and see his Christmas tree. He stated that they were in his driveway for less than two minutes. (Tr. at 74-78, 128; Applicant's response to SOR; GE 2)

Applicant stated that he knew Ms. A's address because they both looked it up on Google Maps on his computer. He denied ever driving by her home. He stated that one of Ms. A's children was interested in archery, and he recommended the shooting range near her home, because it offered archery classes. (Tr. at 78-80; Applicant's response to SOR; GE 2)

Applicant admitted that in retrospect he should not have provided the resumes to Ms. A to review. He thought it was acceptable at the time because they were sent encrypted, and they remained in the office. Ms. A had a secret clearance. He realizes that he provided her with PII that was beyond her need to know, and it was outside of her scope of employment. (Tr. at 53-57, 102, 143-145, 163-164; Applicant's response to SOR; GE 2)

Applicant stated that he did not show Ms. A on his computer how he added funding to her contract, but he did show her a blank sample of how the process works, in order to allay her financial fears. He stated that he told her that he would do his best to help her become a government employee. (Tr. at 71-74, 117-119; Applicant's response to SOR; GE 2)

Applicant testified that he talked with the COR before he took actions to end the funding for Ms. A's contract in the next fiscal year. The COR reported that she was not told about the meeting with the president of the contracting company until after the meeting. Applicant asserted that the decision to not fund her contract was based on a purely fiscal reason and was unrelated to his personal dealings with her. He drove the 10 to 15 miles to the contractor's office out of professional courtesy. Her complaint came after she was informed that her contract was ending. (Tr. at 84-99, 134-142, 155; Applicant's response to SOR; GE 2)

I did not find Applicant's statement during the investigation nor his testimony at the hearing credible. Where his and Ms. A's descriptions of the events differ, I find her version to be more accurate.

Based on the findings in the investigation, including the PII breach with the resumes, Applicant was removed from federal employment for conduct unbecoming a federal employee. He appealed the decision with the Merit Systems Protection Board (MSPB). A settlement was reached between Applicant and the agency in which the agency agreed to withdraw the removal action in return for Applicant's voluntary resignation. He resigned in April 2018. (Tr. at 50-53; Applicant's response to SOR, Tab H-M; GE 2)

Applicant called two witnesses, and he submitted documents and letters attesting to his excellent job performance and strong moral character. He is praised for his technical capabilities, expertise, professionalism, trustworthiness, diligent handling of classified information, judgment, dependability, reliability, work ethic, honesty, dedication, and integrity. Individuals who have known and supervised him for many years indicated that the alleged behavior is completely out of character for him. He is recommended for a security clearance. (Tr. at 17- 43; Applicant's response to SOR, Tabs D-F)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 K, Handling Protected Information

The security concern for handling protected information is set out in AG ¶ 33:

Deliberate or negligent failure to comply with rules and regulations for handling protected information-which includes classified and other sensitive government information, and proprietary information-raises doubt about an individual’s trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

AG ¶ 34 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(a) deliberate or negligent disclosure of protected information to unauthorized persons, including, but not limited to, personal or business contacts, the media, or persons present at seminars, meetings, or conferences; and

(g) any failure to comply with rules for the protection of classified or sensitive information.

Applicant emailed the resumes of 16 job applicants to Ms. A for her to print and sort them. The resumes contained PII, and the task was outside Ms. A’s scope of

employment and beyond her need to know. The above disqualifying conditions are established.

Conditions that could mitigate handling protected information security concerns are provided under AG ¶ 35. The following is potentially applicable:

(a) so much time has elapsed since the behavior, or it has happened 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 good judgment.

There is only one Guideline K allegation, and that occurred almost six years ago. It is a relatively minor breach. Applicant accepted full responsibility for this aspect of his conduct. I find that this specific type of behavior is unlikely to recur. The above mitigating condition is applicable. This and other aspects of Applicant's conduct are discussed further under the personal conduct guideline.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security investigative or adjudicative processes.

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

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

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

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources; and

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

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

SOR ¶ 2.a alleges that Applicant was found to have committed conduct unbecoming a federal employee, and he resigned in lieu of termination. That summarization is mostly accurate, even if not exactly what occurred. Applicant appealed the removal decision with the MSPB. A settlement was reached between Applicant and the agency in which the agency agreed to withdraw the removal action in return for Applicant's voluntary resignation, which he did. The key to this allegation is Applicant's conduct, not the results of that conduct. I find that all of the conduct described in the investigation, including the conduct with Ms. A and the PII breach, is included in this allegation.

SOR ¶ 2.b alleges that a command investigation concluded that Applicant's "conduct towards a female contractor was inappropriate and created an uncomfortable and fearful work environment for her." This apparently alleges the inappropriate conduct with Ms. A, but it does not allege the PII breach. SOR ¶ 2.b does not allege any conduct that is not already alleged in SOR ¶ 2.a. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 2.b is concluded for Applicant.

Applicant's inappropriate conduct with Ms. A and his PII breach reflect questionable judgment and an unwillingness to comply with rules and regulations. The conduct and behavior also created vulnerability to exploitation, manipulation, and duress. AG ¶ 16(e) is applicable. AG ¶ 16(d) is applicable to the inappropriate conduct with Ms. A. AG ¶ 16(c) is applicable to the PII breach.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

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

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

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

If I believed Applicant's version of events, I would find the conduct mitigated. I did not find him credible, and I do not believe his version of events. The factors that went into my decision include the inherent implausibility of his story and his inconsistent statements. Applicant stated that he had absolutely no romantic interest in Ms. A, but he drove a long distance to have lunch with her; he had a long discussion with her in his car outside the airport; he drove her to his house and asked her inside; he took unusual actions regarding her contract; and perhaps most importantly, he continued to hug her and go to lunch with her after she purportedly told him that he could kiss her. Ms. A is imputed to have a motive to fabricate because she was told that her contract was not being funded. However, she complained about Applicant's conduct to another employee and the COR months before she was told about her contract. Applicant's conduct continues to cast doubt on his current reliability, trustworthiness, and good judgment. Personal conduct security concerns are not mitigated.

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 the sexual orientation of the individual.

AG ¶ 13 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and

(d) sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

The SOR cross-alleges the results of the command investigation. Applicant's sexual harassment of Ms. A reflected a severe lack of judgment and made him vulnerable to coercion, exploitation, and duress. AG ¶¶ 13(c) and 13(d) are applicable.

Conditions that could mitigate sexual behavior security concerns are provided under AG ¶ 14. The following 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 good judgment;

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

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

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

Under the same rationale discussed above for personal conduct, Applicant's behavior continues to cast doubt on his current reliability, trustworthiness, and good judgment. Sexual behavior security concerns are not mitigated.

Whole-Person Concept

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

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines E, D, and K in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the handling protected information security concerns, but he did not mitigate the sexual behavior and personal conduct security concerns.

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 K:	For Applicant
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3, Guideline D:	Against Applicant
Subparagraph 3.a:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge