



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



In the matter of:)	
)	
)	ISCR Case No. 20-01552
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
 For Applicant: Aileen Xenakis, Esq.
 06/05/2023

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant did not mitigate the Guideline E (personal conduct) security concerns raised by his behavior. Based upon a review of the record as a whole, eligibility for access to classified information is denied.

History of the Case

Applicant submitted security clearance applications (SCA) on July 27, 2016, and August 7, 2018. On October 16, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline E. He submitted an October 26, 2020 response to the SOR and requested a hearing (Answer). Department Counsel was ready to proceed on June 21, 2021. The case was assigned to me on April 5, 2022. On April 15, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 1, 2022. I convened the hearing as scheduled via Microsoft TEAMS.

At the hearing, I marked the April 29, 2022 case management order as Hearing Exhibit (HE) I; Department Counsel’s (DC) April 19, 2021 discovery letter as HE II; DC’s June 21, 2021 discovery letter as HE III; and DC’s exhibit list as HE IV. Government Exhibits (GE) 1 through 5 were admitted without objection. Applicant objected to the

admissibility of GE 6 on several grounds (relevance, outdated, no substantive reference to it in the SOR, lack of due due process or right to notice, unfairly prejudicial, hearsay, speculation, and foundation issues). GE 6 is a report of investigation (ROI) conducted by another government agency (AGA) into allegations of misconduct by Applicant and pertains to the SOR allegations. I overruled the objections, because the document was created by government employees during the regular course of their duties and agreed to give GE 6 and its attachments their appropriate weight. Additionally, I noted that there was evidence in GE 6 that pertained to issues that were not alleged in the SOR and stated that these issues would not be considered as disqualifying conduct. Applicant Exhibits (AE) A through E were admitted without objection, and Applicant testified. DOHA received the complete transcript (Tr.) on June 22, 2022, and the record closed.

Findings of Fact

Applicant is 37 years old, single, and has no children. In 2009, he has received a bachelor's degree in aerospace engineering, and in 2015, he received a master's degree in aerospace-systems engineering. He worked as a general engineer for AGA from May 2010 to December 2015. He was unemployed from January 2016 to July 2016 after Company A, a DOD contractor, "rescinded" its employment offer. Since August 2018, he has worked for Company B, a DOD contractor, as a software quality engineer. He was granted a secret security clearance in March 2010, but he did not hold a security clearance at the time of the hearing. (Answer; GE 1; GE 2; GE 5; AE A; Tr. 26-28, 46-47, 105, 111)

The SOR alleged that Applicant used his government computer on various occasions between 2011 and 2012, "to search inappropriate websites, including some porn websites." (SOR 1.a.) He admitted that he used his government computer to search inappropriate websites. Additionally, the SOR alleged that in December 2015 he was allowed to resign his position at AGA, in lieu of termination, after allegations of misconduct were made against him, and these misconduct allegations were sustained by the U.S. Merit Systems Protection Board (MSPB). (SOR 1.b.) He admitted in part, and he denied in part, this allegation; specifically, he did not appeal to the MSPB, and he denied that he committed the underlying misconduct other than the laptop misuse. Finally, the SOR alleged that he deliberately failed to disclose the previously mentioned 2015 resignation, in lieu of termination, in his 2016 SCA. (SOR 1.c.) He denied deliberately falsifying his 2016 SCA. (Answer)

Applicant started working for AGA in May 2010. This was his first professional position. In January 2012, his supervisor wrote a Memorandum of Record (MFR) documenting issues regarding "[Applicant's] persistence in requesting permission to compile his CWS off days." On October 1, 2012, Applicant received a MFR regarding his "willful disregard to follow directions" related to personal travel following government-related travel. Additionally, he used his government charge card for personal travel. The counselings were not alleged in the SOR and will not be considered as disqualifying, but they may be considered in determining whether the mitigating conditions are applicable and in the whole-person analysis. (GE 6 at 4, 4, 53, 57, 94; Tr. at 43)

On March 13, 2013, Applicant signed an MFR documenting a formal counseling session regarding complaints from female co-workers that he made them feel uncomfortable “by his pattern of uninvited presence and staring, while in a common area.” On November 14, 2014, Applicant signed an MFR documenting a formal counseling session “on his perceived misconduct regarding his unwelcomed and unpredictable behavior towards at least one fellow worker.” His misconduct made her “feel harassed and stalked in the workplace.” The co-worker was one of the individuals who filed the complaint against him in March 2013. This MFR was also signed by his direct supervisor and a representative from human resources. In December 2014, the legal office for a government contractor supporting the AGA office contacted Applicant’s deputy program manager regarding “action about to be initiated against [Applicant] due to multiple reported incidents by a female [government contractor] employee in the [AGA] office.” She claimed Applicant verbally attacked and threatened her. No action was taken against Applicant, because AGA was already in the process of moving him to another location. These counseling sessions and allegations of misconduct were not alleged in the SOR and will not be considered as disqualifying, but they may be considered in determining whether the mitigating conditions are applicable and in the whole-person analysis. (GE 5; GE 6 at 4-5, 34, 38, 40-41, 54-56, 57-60, 94-95; Tr. at 44, 85-88)

As a part of AGA’s ROI, Applicant was interviewed on August 25, 2015, regarding his behavior. He stated, “I look at females without intent of harassing them and I do not think that staring offends people. No one is perfect and this is a tough business, so we all need to be adults and have more maturity and backbone.” He also stated the women who made accusations against him were “being overly sensitive and selfish,” had a “hidden agenda,” and “exaggerated” the events. In his statement, he also acknowledged that he received an MFR in November 2014 “documenting the formal behavior counseling session.” (GE 6 at 51)

Shortly after the August 25, 2015 interview, Applicant was placed on paid administrative leave and barred from AGA. On October 2015, Applicant was advised by AGA of a proposal to remove him from federal service for the offense of inappropriate conduct, and he was charged with misuse of his government computer between 2011 and 2012, as mentioned above, as well as six additional allegations of misconduct between January 2015 and September 1, 2015, as detailed below. (GE 3-4; Tr. at 52, 110)

- After being moved to Area X on or about January 17, 2015, on various occasions from January to August 2015, Applicant engaged in inappropriate conduct by continually walking by the offices of and/or staring inappropriate at [Woman A (WA)] and [WB].” He was counseled by his supervisor for this behavior and instructed to cease and desist, but he continued to engage in this inappropriate behavior despite the explicit instruction. Finding: Sustained
 - Neither of these women were the complainants from the 2013 or 2014 MFRs. (Tr. at 73-75)

- Applicant was removed from his place of work in Area X and moved to Area Y on August 11, 2015. On various occasions, from August 11th to 28th, he engaged in inappropriate conduct by continually walking by the offices and/or staring at WC and WD. He was counseled by his supervisor (who was different than his supervisor in Area X) for this behavior and instructed to cease and desist, but he continued to engage in this inappropriate behavior despite the explicit instruction. Finding Sustained
- On July 25, 2015, while in the AGA front office, Applicant's supervisor witnessed him behave and speak in an inappropriate way to other employees regarding his timecard. Applicant stated, "[T]hat was bull crap and he is lying, he needs to stop and take five minutes out of his day to sign my time card." Finding: Sustained
- On August 25, 2015, Applicant stopped by the desk of an executive assistant [WD] and stared at her for an extended period, making her feel uncomfortable. When WD asked a male colleague to help her with something, and he walked up to WD's desk, Applicant "stated in an angry voice/tone "Ya'll Mother Fuckers," or words to that effect and quickly left. Finding: NOT Sustained
- On Friday, August 28, 2015, Applicant's supervisor notified him that he was being placed on administrative leave for Monday, August 31, 2015. August 28th was a scheduled day off for Applicant; however, he attempted to access his office at 1825. He then attempted to access the office again on Monday, August 31st. When he was questioned about this on September 1st, he stated that wanted to see what the issue was and retrieve his laptop, and that he was unaware that being placed on administrative leave meant that he did not have access. Finding: Sustained
- On September 1, 2015, during a joint interview with human resources and security, he made the following statements, "I'm suspecting someone's trying to get me in trouble...Someone with a hidden agenda is trying to get me and concoct this thing. I suspect gossip is going on. If that is the case, I'll seek revenge and suspect something is wrong with that person. I think it's sweet sorrow – it's a saying from Shakespeare," or words to that effect. Finding: Sustained
 - At the hearing, Applicant admitted that he made these statements, but claimed they were just "very, very silly." (Tr. at 127)
- A review and report of the contents of Applicant's laptop computer revealed that from 2011 to 2012, he conducted searches that involved

the lower portion of the female anatomy and visited websites that contained videos of this nature. Finding: Sustained (GE 3; GE 4; GE 5; GE 6)

To the best of Applicant's knowledge, the women who worked in Area X did not know the women who worked in Area Y. Nor did either of these groups of women know the women from his previous work location who made complaints against him 2013 and 2014. The three groups of women worked in different buildings and different departments. However, it is clear from the statements in GE 6 that, while in Area X and Area Y, the various women in each respective area discussed their interactions and experiences with Applicant with one another and he had a general reputation for being "creepy." Some of the statements in the ROI were made by people who heard things about him but did not witness or experience first-hand threatening behavior. (GE 6; Tr. 137-139)

Applicant and his counsel responded orally to the above allegations on November 5, 2015. According to AGA's December 2015 memo, Applicant stated that "the individuals never told [him] to stop, and [he] was not given a 3 or 4 second rule. [He] also stated that their claims were exaggerated." (GE 3 at 4)

In its December 9, 2015 memo, AGA concluded that it was removing Applicant from federal service effective December 14, 2015. It sustained six of the specifications outlined above due to his inappropriate conduct and did not sustain one specification. The agency only considered the information provided to Applicant (and his attorney) and Applicant's November 5, 2015 oral response. The memo noted that Applicant was counseled on five different occasions for the same conduct by two separate supervisors. In the memo, he was provided information regarding his right to appeal the decision to the MSPB. Applicant signed acknowledgement of the memo on December 9, 2015. (GE 3; GE 4; Tr. 51-52)

Applicant indicated in his July 2016 SCA that he left AGA in December 2015, because he was, "Dissatisfied with civilian service; Wanted to move to the industrial sector; Was originally extended a job offer at [Company A] at the time of resignation." He also reported his subsequent seven-month period of unemployment, because Company A rescinded its offer of employment. He disclosed no derogatory information in this SCA. (GE 1 at 13-14)

At the hearing, Applicant testified that Company A never gave him a reason as to why they chose not to hire him. He was unable to secure another professional position. He took freelance jobs delivering food and as a ride-share driver and moved in with his parents. He also stated that he first applied to work at Company A in late November and was offered a position in December. (Tr. 39, 69-70, 110-111)

During Applicant's August 2017 interview with a government investigator, he indicated he voluntarily resigned from AGA in December 2015 to accept an offer with a defense contractor, but the offer was later rescinded by its legal office because he was a too-recent employee of the federal government. He also stated that he never received

written warnings and reiterated that his resignation was voluntary. He was confronted by the investigator regarding allegations of searching inappropriate websites, staring at female employees after being warned, and being terminated. He admitted to searching inappropriate websites, including some porn sites, but only during his breaks or at lunch. He also admitted that several women made complaints against him but denied the underlying conduct. Additionally, he reiterated he never received a formal written reprimand or warning for this behavior. He also stated he was on administrative leave from September to December 2015, when he was allowed to resign (GE 5 at 4, 9-13; AE C; Tr. at 61-62, 66-67, 126)

When Applicant adopted the above interview (undated DOHA interrogatories), he repeated that he “never received any official letter of reprimand” from AGA. He also changed or corrected his typed interview and claimed that he only ever used his government computer inappropriately during “after hours” at his home, never at the government office. At the hearing, he testified that he still believes that he never received formal or official reprimands or counseling. (GE 5 at 5-7; Tr. at 63-65)

In Applicant’s August 2018 SCA, he revealed additional information regarding why he left AGA in December 2015:

Despite the allegations, I strongly disagree with the charge. At the time, I considered pressing charges against the agency for slander & defamation. I made an executive decision not to because I was in the midst of changing employers at the time. If the allegations cause an adverse affect [sic] on this security application process, I will seek legal recourse against [AGA for] slander and defamation.

Applicant also indicated that he left AGA by mutual agreement following charges or allegations of misconduct, and the charges alleged against him were that he “caused a hostile work environment.” He did not provide specific information regarding what allegations were made against him. (GE 2 at 15-16, 33; AE D; Tr. at 59)

During Applicant’s November 2018 interview with a government investigator, he indicated that his misuse of his government computer was discovered while he was on administrative leave. Prior to this period, he had not disclosed his inappropriate conduct to anyone. He also disclosed that he ultimately settled with AGA in May 2016, and his SF50, was backdated to December 2015. (At the hearing, he stated that they settled in March 2016.) The SF50, indicates that Applicant’s characterization for leaving AGA was “resignation.” Applicant testified his attorney indicated that this characterization was correct. According to his hearing testimony, he started to plan to leave AGA in mid-2013 and transition to the private sector; therefore, his 2016 SCA characterization for leaving AGA was not inaccurate. However, upon cross-examination he admitted that he did not apply for a job with Company A until late November 2015, after he knew his job was in jeopardy. (GE 3; GE 5 at 4, 16; GE 6 at 96-107; Tr. 35-38, 107)

During direct examination, Applicant stated that he did not intend to give a wrong answer in his 2016 SCA. While he was being cross-examined, he stated that he partially amended or changed the nature of his employment termination with AGA based upon his August 2017 interview and the questions the investigator asked him. However, he also claimed that the security clearance process was taking a long time, and he wanted to do something different to make the process “better.” He also admitted that his 2018 SCA more accurately reflected the nature of why he left AGA. However, in his mind, he negotiated through his attorney a resignation determination; therefore, he was not fired, nor did he resign, in lieu of termination. He did not consult with an attorney before completing either SCA. (Tr. 42, 53-61)

When Applicant was questioned by the Administrative Judge (AJ) regarding his statements in his 2016 SCA, he stated:

AJ: [W]ere you concerned at all if you disclosed what...happened during the course of your employment at [AGA]...in the eQIP, that you wouldn't be hired by [Company A]?

Applicant: I had that concern, yes.

AJ: [W]ere you concerned if you disclosed this information – this negative derogatory information that happened at [AGA] in your eQIP, that it might cause a hiccup with your security clearance?

Applicant: I'm sorry, repeat that again please, I apologize.

AJ: Were you concerned if you disclosed the negative derogatory, information related to your employed at [AGA] in your eQIP, your 2016 eQIP, that it might cause a problem with your security clearance?

Applicant: Yes, absolutely. (Tr. 109-110)

When Applicant started his employment at AGA, he received training and knew it was inappropriate to view pornography on his government computer. Applicant testified that his misuse of his government computer occurred during off-duty hours, outside of his work premises, and only at his home. According to the investigation report concerning his laptop, some of the inappropriate websites were accessed during Applicant's work hours on business days. He did not provide documentation that he was on leave or working from home for these dates. Additionally, he claimed that his behavior discontinued because of his conscience; however, he did not self-report his conduct. This behavior occurred between 2011 and 2012, and he testified that he will never do it again. (GE 6 at 96-107; Tr. 30-32, 113-124)

In Applicant's November 2018 interview, he disclosed that he forgot to disclose a security violation in October 2011. He told the interviewer that he left a classified document on his desk that was discovered by a co-worker. As a result, he was verbally

counseled. According to AGA's September 2015 ROI, Applicant put the classified documents in his backpack on Friday, October 28, 2011. "The classified documents were not properly wrapped, documented, transported or stored, and remained in his backpack over the weekend and went back/forth to work/home through Tuesday, 1 November 2011 where it was discovered by security." He was counseled as a result of this violation and received remedial training. The security violation and Applicant's failure to disclose it in both of his SCA's were not alleged in the SOR and will not be considered as disqualifying, but the conduct may be considered in determining whether the mitigating conditions are applicable and in the whole-person analysis. (GE 1; GE 2; GE 5; GE 6 at 7, 24-25, 28-33, 47, 49)

Applicant initially testified that he appealed his case to the MSPB. However, upon questioning by the AJ, it was determined that he did not in fact appeal his case to the MSPB, because he was able to negotiate through his attorney an amended SF50 in approximately March or May 2016. (Tr. 37, 56, 101-105)

Applicant has had no disciplinary issues while at Company B. He has not informed his employer of any of the issues related to his employment with AGA, "because they never asked." However, he admitted at the hearing that when he has been asked why he left AGA he tells people at Company B, "I didn't want to work in the government at that point in my life." Additionally, he stated that he has not "given them completely all of the details..., because I didn't want to talk too much." During the process of applying and being hired by Company A, he did not disclose any of his employment issues, because they did not ask either. (Tr. 27, 45, 47-48, 50-51, 108-110, 112-113)

Applicant volunteers with various charitable organizations and attends church virtually on a weekly basis. He provided five letters of support. All of the individuals had reviewed the SOR, did not find the allegations to be reflective of his character, patriotism, or willingness and ability to protect classified information. They all recommended that he receive a security clearance. One of the individuals, a college professor, held a security clearance in the past, and another individual, a friend and former colleague at AGA, currently holds a security clearance. There is no evidence in the record that the individuals reviewed any of the government's exhibits. (AE B; AE E; Tr. 29-30)

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 AG ¶ 2, describing 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."

According to 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 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 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 E: Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

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

AG ¶ 16 describes the following conditions that could raise a security concern and 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; 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.

There is sufficient evidence in the record to establish that Applicant's failure to accurately disclose the circumstances in which he left AGA in December 2015 was purposefully deceptive. It was only after he was confronted multiple times by the government investigator during his August 2017 interview that he admitted to any derogatory behavior or issues surrounding his AGA employment. Additionally, upon questioning by the AJ, he admitted that he was concerned that if he disclosed his termination, it would affect his ability to obtain a position with Company A and a security clearance. His admitted use of a government computer to view pornography and his resignation in lieu of termination due to allegations of misconduct are both issues of personal conduct that could create a vulnerability to exploitation, manipulation, or duress and affect his professional standing. It is clear from the record evidence that he has not disclosed this behavior to anyone at his current employer, nor did he disclose it to a past

prospective employer, due to his ongoing concerns over these repercussions. These facts raise significant security concerns under AG ¶¶ 16(a) and 16(e)(1).

The record evidence does not establish that Applicant's misconduct alleged in SOR ¶ 1.b was sustained by the MSPB.

After the evidence raised these disqualifying conditions, the burden shifted to Applicant to rebut or prove mitigation of the resulting security concerns. AG ¶ 17 provides three conditions that could mitigate security concerns in this case:

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

Applicant reported some of his AGA employment issues in his August 2018 SCA. However, the record evidence demonstrates that he did this, in part, because of the investigator's confrontation during his July 2017 interview. Therefore, this disclosure did not establish significant mitigation under AG ¶ 17(a).

Company B is unaware of Applicant's past employment issues at AGA, and he admitted that he does not want "to talk too much about it" or give the details away. His lack of transparency and honesty with both Company B and Company A (during their hiring process) demonstrates he has not taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's misuse of a government computer occurred between 2011 and 2012. He testified that the behavior only occurred at home, during non-work hours; however, the record evidence does not fully support these claims. Additionally, although he stopped on his own volition, he failed to self-report his behavior. Typically, when problematic behavior has not recurred for over ten years, it could be mitigated by the passage of time. However, Applicant minimized the time-period of his behavior (early to mid-2011 versus 2011 to 2012) during his November 2018 interview. I also find that he was less than truthful in his response to the DOHA interrogatories and at the hearing regarding his use of the government computer to look at pornographic sites ONLY at home and ONLY during non-working hours. During his initial interview in July 2017, he admitted to looking at pornographic sites in the workplace during his lunch or other breaks. Due to his ongoing dishonesty, the underlying behavior is not mitigated.

Applicant continues to deny the majority of the underlying misconduct that was alleged against him in AGA's ROI and that was the basis for his resignation in lieu of termination. It was clear from the statements made by the complainants and other co-workers that he was inappropriate and frequently discussed within each of the three different AGA locations he worked. I considered Applicant's counsel's objections to the ROI, including that some individuals who made statements did not have first-hand knowledge of his behavior. In considering this evidence, I also considered that multiple women, in different departments, and in different buildings made the effort to go to their supervisors and make formal complaints against him. These complaints started in 2013 and continued until his access was removed in August 2015. His behavior continued despite multiple MFRs and direct orders from two separate supervisors. At the hearing, he continued to fail to accept responsibility for his behavior or truly acknowledge that he behaved inappropriately toward a multitude of female co-workers.

Although it was not alleged, Applicant's failure to disclose his 2011 security violation in his 2016 SCA is also troubling. Additionally, he minimized the violation during his November 2018 interview when he stated he left a document on his desk that was discovered by a coworker. In truth, he carried multiple classified documents in his backpack over a five-day period until discovered by security. Additionally, he provided varying reasons as to why he did not work for Company A after he left AGA in December 2015. His inconsistent statements reflect a lack of truthfulness regarding a seemingly minor issue. His failure to be honest regarding the 2011 security violation, his failure to secure employment with Company A, his misuse of his government computer, his failure to disclose derogatory employment information in his 2016 SCA, and during his August 2017 interview is all concerning because it demonstrates that Applicant is untrustworthy and has a history of deceptiveness. He has not sufficiently demonstrated good judgment, reliability, or reduction of his vulnerability to coercion and manipulation. Mitigation was not established under AG ¶¶ 17(a), 17(c), or 17(e).

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common-sense judgment based upon careful consideration of the pertinent guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, including his education and character statements, Applicant has not mitigated the security concerns at issue. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a & 1.c:	Against Applicant
Subparagraph 1.b:	Against Applicant For Applicant, in part, excepting “and sustained by the MSPB”

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant or continue Applicant's eligibility for access to classified information. National security eligibility is denied.

Caroline E. Heintzelman
Administrative Judge