



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



In the matter of:)	
)	
)	ISCR Case No. 21-02236
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany C. M. White, Esq., Department Counsel
For Applicant: *Pro se*

09/05/2023

Decision

MURPHY, Braden M., Administrative Judge:

In August 2020, Applicant was arrested and charged with taking indecent liberties with a child, a neighbor and friend of his daughter's, a child who was 12 years old at the time. In March 2021, he pleaded guilty to the lesser offense of contributing to the delinquency of a juvenile. He received two years of probation. Although he has completed the probation term and the court-ordered requirements, Applicant's criminal and inappropriate conduct with a minor, which occurred after he submitted his security clearance application is unmitigated and continues to cast doubt on his reliability, trustworthiness, and judgment. Applicant did not provide sufficient information to mitigate criminal conduct and sexual conduct security concerns. Financial considerations security concerns are mitigated. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 16, 2020, in connection with his employment in the defense industry. On January 11, 2022, following a background investigation, the Defense Counterintelligence and Security Agency

Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines J (criminal conduct), D (sexual conduct) and F (financial considerations). The CAF issued the SOR under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4 (SEAD 4) *National Security Adjudicative Guidelines* (AG), which became effective on June 8, 2017.

Applicant answered the SOR on March 2, 2022, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on April 18, 2023. On May 4, 2023, DOHA issued a notice scheduling the hearing for June 5, 2023, with the hearing to occur via video-teleconference through an online platform.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 7. Applicant testified and submitted Applicant's Exhibits (AE) A through C. All exhibits were admitted without objection. At the end of the hearing, I held the record open until June 20, 2023, to enable Applicant the opportunity to submit additional information. He subsequently submitted three credit reports, which are marked as AE D, AE E, and AE F, and admitted without objection. DOHA received the hearing transcript (Tr.) on June 14, 2023. The record closed on June 20, 2023.

Findings of Fact

In his Answer to the SOR, Applicant admitted SOR ¶¶ 1.a, 1.b, 3.d, 3.e, 3.f, and the cross-allegation at SOR ¶ 2.a, all with explanations. He denied SOR ¶¶ 2.b, 3.a, 3.b, and 3.c, all with explanations. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 34 years old. He married in 2013. He and his wife separated in 2019 and divorced in 2020. They have three children, a son, age 13, a daughter, age 8, and a son, age 7. They share custody of their children and live in the same neighborhood. (GE 1; Tr. 59-62, 68)

Applicant earned an associate degree in 2010. He served on active duty in the U.S. Navy as a corpsman and psychiatric technician from 2010 to 2015. He was discharged honorably as an E-3. From October 2015 to October 2017, he worked as a mental health technician at a civilian hospital in state 1. Since October 2017, he has been employed by a defense contractor as a mental health technician in an inpatient psychiatric unit at a naval hospital in state 2. He held a clearance in the Navy. (GE 1; Tr. 9-10, 35-36, 46-50, 58, 112-114)

In 2014, Applicant took the cellphone of another sailor without her permission. He "flipped" through pictures on her phone. Applicant said he did it as a "joke." (GE 1 at 20)

He was charged with wrongful misappropriation of the cellphone under the Uniform Code of Military Justice (UCMJ). He pled guilty, received non-judicial punishment (NJP) of 45 days of extra duty. (SOR ¶ 1.b) (The SOR allegation references forfeiture of \$858 a month for two months but this is not established). Applicant was also transferred to another job location so he would no longer have contact with the female sailor. (GE 1 at 20; GE 2 at 2-3; Tr. 51) In his hearing, Applicant testified it was a “juvenile prank that was very stupid.” He said he gave the phone right back and did not steal it. (Tr. 33-34, 75-79)

In 2015, Applicant was investigated by the Naval Criminal Investigative Service (NCIS) following an interaction between himself and a female former patient. About a year after the female sailor was a patient of his, he saw her at a public library and engaged her in conversation. She later alleged that he had been “hitting on” her. His background interview references a charge of sexual assault under UCMJ Article 120 (GE 2 at 3) but there are no charging documents in the record. Applicant asserted that he did not do anything inappropriate in interacting with his former patient. (Tr. 52) The case was evidently dismissed shortly before Applicant was discharged from the Navy. (GE 2 at 3; Tr. 51-55). This incident was not alleged in the SOR.

While working at the behavioral hospital in state 1 in 2016, Applicant was verbally reprimanded after giving his personal phone number to a female patient. He said he did this unprompted so the patient would have a way to reach out if she needed help, because he felt that she “did not have adequate support.” He denied any romantic interest. (GE 2 at 4; Tr. 55-56) He had not done this before. He had been trained in how to interact with patients and said what he did was “not encouraged.” (Tr. 56) This incident was not alleged in the SOR.

In early July 2020, police responded to a complaint filed by a neighbor (Ms. N) of Applicant’s, after she found inappropriate messages and photos on the cell phone of C, her 12-year-old daughter. C had been communicating with Applicant online, via Facebook Messenger, in June and July 2020. The N family and their children were friends of Applicant’s children. In August 2020, following an investigation, Applicant was arrested and charged with (taking) indecent liberties with a child, a felony. (GE 3) (SOR ¶¶ 1.a, 2.a)

Applicant was interviewed about his arrest in a security clearance background interview on September 1, 2020. (GE 2 at 7-10) (An earlier background interview, in late July 2020, predated Applicant’s arrest). (GE 2 at 2-6; Tr. 72-73, 100)

When prompted at the start of his September 2020 interview. Applicant reported that he had been accused of taking indecent liberties with a child. He said his wife had had a “falling out” with her friend Ms. N (the neighbor) and had accused both Applicant and his wife of indecent liberties with her children. The families and their children had been friends and the families’ daughters would socialize together. Applicant tried to look after N’s daughters because they did not have a father figure. (GE 2 at 7; Tr., 49-50, 63-66)

Applicant said he talked to C, the 12-year-old daughter, on a daily basis through Facebook during June and July 2020. They discussed general topics such as daily life. He acknowledged using “inappropriate language” with C. He said C had sent him “pictures of herself, to show him her outfit, and [Applicant] referred to [C] as ‘sexy.’” He said he should have used words like “beautiful” instead, and was “just trying to look out for her by boosting her self-esteem.” He acknowledged his words were “inappropriate.” (GE 2 at 7-8; Tr. 66-67, 69-70)

Applicant then said C volunteered to send him another picture. C then sent him a “naked photo” of herself. He said he deleted the photo and told C to never do anything like that again. He did not believe he had pressured C. Applicant did not tell his wife about the photo “because he did not want to violate [C’s] trust by getting her into trouble. [Applicant] continued to have daily contact with [C] after she sent him the photo.” He said there was nothing further sexual and no sexual gratification on his part. (GE 2 at 8; Tr. 69-70)

C’s family member discovered the photo on C’s phone and contacted Applicant through C’s Facebook account. He told Applicant that “he did not like [Applicant’s] relationship with [C] and began to get aggressive and threatening towards [Applicant].” Applicant then said he would cut off all contact with C, and did so. He was arrested a few weeks later. (GE 2 at 8; Tr. 70-71) Applicant said that, as a father, he would be “concerned” if his child were interacting with a 30-year-old man on a cell phone. (Tr. 70)

Applicant said in the interview that he believed Ms. M was coaching C to make these accusations. He has only been with C in person in the presence of Ms. M or his wife, except once, when he and C were seated on the couch together for about 20 minutes. He said he believed Ms. M might claim that Applicant tried to kiss C, which he denied. He said other children were present and playing in the house at the time. (GE 2 at 8-9) He got no sexual gratification from any interaction with C. Applicant said in his interview that the criminal case was pending, he had retained counsel, and said he was innocent. (GE 2 at 9)

In March 2021, Applicant pled guilty to a lesser charge of contributing to the delinquency of a juvenile. He was fined and sentenced to two years of probation. The fine has been paid. (GE 2 at 17, GE 3; Tr. 62, 73-74)

In his hearing testimony, Applicant denied instigating “any kind of sexually inappropriate conduct” with C. He said it was she who sent sexual materials to him. He acknowledged that he should not have been talking to her in the first place. (Tr. 39) He did not recall how he came to have C’s cell phone number. “I assume she just gave it to me.” He said they interacted on Facebook, not by cell-phone texting. He asserted that C found him on Facebook and added him as a contact. (Tr. 41) Applicant said C would send her pictures and ask her his opinion and said that one time she sent him a sexual picture, which he deleted at once and told her that was inappropriate. (Tr. 41) He confirmed that he was charged after C’s parents discovered the messages and pressed charges. (Tr. 41-42)

While on probation, Applicant was required to “have no inappropriate contact with [C] or any other minors.” He does not believe there was a “stay away” order put in place, but he was “strongly advised” by the judge not to contact C again, and he has not done so. (Tr. 42-43, 94) His probation was unsupervised, and he was not required to register as a sex offender. He said he did not have to attend counseling. He said he completed the two years of probation in March 2023, (Tr. 43-44) I requested that Applicant provide post-hearing documentation that he had completed probation fully and successfully. (Tr. 44) He did not do so. He said he has not engaged in that conduct again and he never will. (Tr. 39)

In April 2021, Applicant was investigated by the local police following a complaint filed by his ex-wife, A. She had reported that their daughter, D, had told her that D had been sitting next to Applicant on the couch, where D observed Applicant “touching himself” while watching a “video of naked girls” on his phone. (GE 4 at 3) (SOR ¶ 2.b)

Local police interviewed all three of their children. Only one “made a disclosure about her father showing her pornographic material” one time. In the police report, the circumstances were explained as “child walked in on dad late at night.” (GE 3 at 5-6) The district attorney expressed concern but declined to prosecute. The investigating officer spoke at length with a representative from the county department of social services (DSS) and “determined [that the] biological mother [A] was feeding information to [the] children.” The police investigation was then closed without further action. (GE 3 at 6)

Applicant denied the incident in its entirety and said it “never happened.” He denied inappropriately touching himself in D’s presence and denied watching pornography on his phone in her presence. (Tr. 37-38) He said in his Answer that it was a false claim brought by his ex-wife with no basis in fact. (Answer to SOR ¶ 2.b; Tr. 98)

Applicant provided a January 2022 letter from county DSS regarding their investigation of April 2021 allegations of “sexual abuse and neglect, improper care improper supervision, and injurious involvement.” In June 2021, Applicant’s family was found to be in need of parenting skills, child characteristics, and communications skills. Applicant and his former wife completed a “Crossroads of Parenting and Divorce” program and other classes, and the DSS case was closed. (AE C; Answer; Tr. 87-88, 104-105) DSS’s letter concluded with recommendations that Applicant “continue to ensure to not expose your children to any pornography, sexually explicit conversations, or any sexual acts. The Department believes your children are in a safe environment residing with you.” (AE C) Applicant said he has complied with these recommendations. (Tr. 88-89) He has not participated in other family or parent counseling. (Tr. 109)

Applicant confirmed at his DOHA hearing that he was not charged or arrested because of this incident, and the authorities took no action to alter the child custody arrangement in place with his ex-wife as a result. There was no negative impact on his probation status and he was not told to report the matter to probation. (Tr. 44-46)

Applicant acknowledged another previous incident, in which another of his daughters walked in on him late one night when he was watching pornography in the living room. Anything she saw was inadvertent and he thought he was alone. He was not aware that he had been seen until his ex-wife told him that their daughter had seen him. He acknowledged that he should not have been watching pornography where he could have been discovered, and now does so in private. (Tr. 81-85, 87, 99)

Applicant has not had any allegations of misconduct made against him regarding his children since 2021. He still has a Facebook account but uses it rarely. He does not interact with children on Facebook. (Tr. 86) He has not engaged in inappropriate behavior since 2021, either with children or his patients. He has not had personal relationships with patients since the incident in 2016. (Tr. 94)

Under Guideline F, the SOR concerns six delinquent debts, totaling \$9,809. The debts are established by credit reports in the record, from June 2020, November 2021, and May 2022. (GE 5, 6, 7) (SOR ¶ 3)

Applicant disclosed on his SCA that he had some delinquent debts, and that he was resolving them with the assistance of a debt consolidation company. (GE 1 at 37-39) Starting in July 2019, he had paid them \$250 a month for about two years to resolve his debts, all but two of which were resolved by the time of the hearing. (Tr. 25-26, 29) He is no longer contracted to the debt resolution company since the remaining creditors would not settle with them, and he stopped paying the company a few months before the hearing. (Tr. 28, 105) He acknowledged that he incurred debts because he spent more than he could afford to pay, but he took out loans for necessary expenses (rent and a car loan), rather than frivolous ones. (Tr. 59-60)

SOR ¶ 3.a (\$3,201) is a charged-off auto loan account. (GE 5 at 5; GE 6 at 4) This account was settled and now shows a zero balance. (GE 7 at 4; AE B, AE D, AE E; Tr. 26-27) Applicant said the account became delinquent because that was a requirement of entering into debt resolution. (Tr. 31)

SOR ¶ 3.b (\$2,034) is an account placed for collection by a landlord or rental property manager. (GE 6 at 4; GE 7 at 3) This account remains pending. (AE F at 19-21) Applicant said he was not aware of it until he received the SOR. He is in negotiations to address this debt. (Tr. 24, 26-27)

SOR ¶ 3.c (\$1,902) is a charged-off credit card account. (GE 5 at 5) This account was settled and now shows a zero balance. (GE 7 at 4; AE B, AE D, AE E; Tr. 27)

SOR ¶ 3.d (\$1,108) is a rental account placed for collection by a management company. (GE 5 at 5; GE 6 at 1; GE 7 at 1) This account remains pending. (AE D, AE E, AE F at 49) Applicant said the creditor would not accept a settlement so he must pay the full balance, which he intends to do. (Tr. 26, 27, 31)

SOR ¶ 3.e (\$857) is an account that has been charged off by a bank. (GE 5 at 5) Applicant said this debt has been paid. (Tr. 28) SOR ¶ 3.f (\$707) is an account placed for collection by a debt buyer. (GE 6 at 3) This account is being settled by Applicant's debt consolidator. (AE B; Tr. 28) Applicant said that these accounts are actually one debt (one to the creditor and one to the collection agency). It was a loan related to auto repair financing. He accrued this debt because he was struggling financially. (Tr. 31-33)

Applicant works full time and currently earns about \$35,000 to \$40,000 annually. He said he earns about \$3,000 a month, after taxes. He estimated that he has \$600 to \$1,000 left over after monthly expenses. (Tr. 90-92, 109) He pays \$700 a month in child support and \$600 a month in rent. (Tr. 104) He does not keep a monthly budget and has not been through credit counseling since he was in the Navy. (Tr. 93) He has no other delinquent debts and he intends to resolve what he owes. He has no unfiled tax returns and no unpaid tax debt. (Tr. 105-109)

Applicant accepted responsibility for his actions. He said he accepted his punishment and paid his debt to the state. He has never had any issue with patients he has treated in his current job and has never had any work issues. (Tr. 46) He completed his probation and has not had any further issues in the last three years. He does not believe he is a liability to the government. He has worked in his field for 14 years and does not want to lose his career. (Tr. 50, 97-98, 110-112, 126-129; GE 2 at 11, 15)

Applicant provided a reference letter from his division officer, a Navy Lieutenant, G. G has known Applicant since May 2021. He regards Applicant as dependable and proficient, and says he exercises good professional judgment. He is a reliable and essential member of the team. (AE A) Applicant testified, however, that G is not aware of any of the SOR allegations. (Tr. 75, 103-104)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has noted, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as

the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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

Analysis

Guideline J: Criminal Conduct:

AG ¶ 30 expresses the security concern for criminal conduct:

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

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

In August 2020, Applicant was arrested and charged with taking indecent liberties with a child. In March 2021, he pleaded guilty to the lesser offense of contributing to the delinquency of a juvenile. He received two years of probation. In

2014, Applicant received NJP under the UCMJ for taking another sailor's phone without her permission. AG ¶ 31(b) applies to both SOR ¶¶ 1.a and 1.b.

AG ¶ 31(c) (individual is currently on parole or probation) does not apply, since Applicant's two years of probation ended in March 2023, shortly before the hearing.

AG ¶ 32 sets forth the potentially applicable mitigating conditions:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

The 2014 incident in which Applicant received NJP after he took another sailor's cellphone without her permission is mitigated by the passage of time. His more recent criminal conduct, involving C, a minor child, is not. Applicant, then a married adult male in his early 30s. exercised extremely poor judgment in his relationship and daily interactions with C, a 12-year-old neighbor and friend of his daughters. In June and July 2020, he engaged with C on a daily basis over Facebook, purportedly out of an interest in her well-being. She began sending him photos and asking him her opinion of her physical appearance. He said she looked "beautiful," even "sexy." She sent him a naked photograph of herself. He told her not to do it again, but did not report the matter, either to his wife, or to the girl's mother, whom he knew. Once the photos were discovered by C's family members, Applicant was charged with felony indecent liberties with a child, and he later pled guilty to a lesser offense of contributing to the delinquency of a juvenile. He successfully completed two years of probation, but only recently, in March 2023. Applicant's interactions with C also occurred recently, only three years ago, He engaged in this conduct while his current security clearance application was pending adjudication (indeed, he had just completed it), a time when he might be expected to be particularly mindful of the importance of exercising good judgment.

AG ¶ 32(d) has some application, as Applicant successfully completed probation in March 2023. But his conduct is too recent, and too serious, to be considered fully mitigated. Further, Applicant has also engaged in a pattern of conduct (some alleged, and some not) in which he wrongly asserted a parental or mentor-like responsibility for vulnerable females, including a patient and a minor child. AG ¶ 32(a) is not applicable. He did not show that his conduct occurred under such unusual circumstances, that it is unlikely to recur and does not cast doubt on his reliability, trustworthiness, or good judgment. Applicant did not mitigate security concerns about his established criminal conduct.

Guideline D: Sexual Behavior

AG ¶ 12 expresses the security concern for sexual conduct:

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:

- (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 lack of discretion or judgment.

SOR ¶ 2.a is a cross-allegation of SOR ¶ 1.a, Applicant's August 2020 arrest discussed above. Applicant was charged with taking indecent liberties with a child after C, a 12-year-old neighbor, sent photos wearing outfits in which he said she looked "sexy," and later sent him a naked photo of herself on Facebook. He pled guilty to contributing to the delinquency of a minor, a lesser offense. It is not established in this record that Applicant requested the naked photo of C. Given the fact that a child was involved, and that he was arrested for taking liberties with a child. I find that Applicant's actions constitute "sexual behavior of a criminal nature" even though he pled guilty to a lesser offense without a specific sexual component. AG ¶ 13(a) applies. AG ¶ 13(d) also applies given the serious lack of judgment involved.

Applicant also did not report the matter to anyone, such as his wife or C's mother until it was discovered by C's family members. His assertion that he did not disclose the matter out of concern for C is not credible. His lack of disclosure left him vulnerable to exploitation, coercion, or duress, so AG ¶ 13(c) applies.

SOR ¶ 2.b alleges that Applicant's six-year-old daughter reported that he inappropriately touched himself in her presence while watching pornography on his phone in April 2021. Applicant denied the allegation. Documentation establishes that the

matter was investigated by criminal authorities and no charges were brought. Applicant also documented that DSS investigated and found his family in need of services and parenting classes, which he and his wife completed. DSS recommended that Applicant work to protect his children from exposure to sexual acts as well as sexually explicit materials and conversations, but found that his children were in a safe environment in his home. This allegation is not established as a Guideline D security concern.

AG ¶ 14 sets forth the potentially applicable mitigating conditions for sexual conduct:

(b) the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

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

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

No mitigating conditions apply. AG ¶¶ 14(b) and 14(c) are not established to mitigate any sexual aspects of Applicant's interactions with C for the same reasons they are not mitigated under Guideline J. C, then a 12-year-old child, was not old enough to give meaningful consent to any part of the inappropriate interactions with Applicant. The behavior was also not private or discreet. AG ¶ 14(d) does not apply.

Guideline F, Financial Considerations

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

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

The Guideline F allegations in the SOR concern several delinquencies, among them consumer debts and rental debts. The debts are established by the credit reports in the record and by Applicant's admissions. AG ¶¶ 19(a) and 19(c) apply.

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

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's various debts arose because he became financially overextended and his expenses were greater than his income. He acknowledged that his debts are attributable to his own actions, and not to a circumstance beyond his control, such as his divorce. He addressed his debts through a debt resolution company, and made steady payments of about \$250 a month to address them beginning in about 2019, before he submitted his SCA, and well before the SOR was issued. Most of his debts were resolved in this manner. Only two remain, because the creditors would not accept a settlement. Applicant intends to resolve what is left, and they are small enough that he has the means to do so. His recent credit reports do not show other delinquencies. An applicant is not expected to pay all of his SOR debts and need not address the debts in any particular way. What must be shown is some good-faith efforts to pay or resolve the debts in a responsible way, ideally through a track record of steady payments, and a credible path forward to address them. Applicant has shown sufficient evidence of that here. AG ¶¶ 20(a), 20(c), and 20(d) all apply to mitigate financial security concerns.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines J, D, and F in my whole-person analysis. While Applicant's behavior has a criminal component and a sexual component, what is most evident here is a pattern of overall poor judgment. On multiple occasions, some alleged and some not, Applicant exercised poor judgment, particularly in interacting with females with whom he either had, or purported to have, a relationship as a fiduciary. He has a pattern of putting himself in position where he gets into trouble, not least by asserting an inappropriately protective role over the female involved, be it C, a child, or one of his patients. Only one of these interactions, with C, was alleged, but it is recent and serious enough to stand alone as unmitigated security-significant conduct that causes doubt over his eligibility for access to classified information.

Applicant has not met his burden to establish that it is clearly consistent with the national interest to grant him eligibility for access to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for access to classified information.

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 J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline D:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

Paragraph 3: Guideline F: FOR APPLICANT

Subparagraphs 3.a-3.f: For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge