



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



In the matter of: )  
)  
) ISCR Case No. 21-01914  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Carol Connelly, Esq., Department Counsel  
For Applicant: *Pro se*

11/16/2023

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**Decision**

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Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns generated by his molestation of his stepdaughter and his history of financial problems. Clearance is denied.

**Statement of the Case**

On June 8, 2022, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines D, sexual behavior, H, drug involvement, and F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAS took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017.

On March 21, 2022, Applicant answered the SOR admitting all of the allegations except the Guideline H allegations set forth in Paragraph 2. He requested a hearing,

whereupon the case was assigned to me on March 30, 2023. On May 22, 2023, DOHA issued a notice of video teleconference hearing, scheduling the hearing on June 29, 2023. The hearing was held as scheduled. At the hearing, I considered Applicant's testimony, together with seven Government Exhibits (GE), marked and incorporated into the record as GE 1 through GE 7. The transcript (Tr.) was received on July 13, 2023.

### **Findings of Fact**

Applicant is a 68-year-old married man with four adult children. A previous marriage from 1981 to 2015 ended in divorce. Applicant earned a GED in 1976, and is a veteran of the U.S. Marine Corps, serving from 1976 to 1980. His discharge was honorable. Currently, he works for a federal government contractor as a systems administrator. (GE 1 at 12, 28)

Between 1992 and 1994, Applicant molested his stepdaughter. The sexual abuse occurred when she was a young teenager and did not end until she left home to go to college. (Tr. 18) These episodes of sex abuse occurred approximately 24 to 48 times. (GE 4 at 32) Per Applicant, "while [he] did molest [his] then teenage daughter 28 years ago, it was through inappropriately touching her and having her inappropriately touch me, not the sexual molestation, as suggest[ed]." (Answer at 2)

Applicant's stepdaughter did not report the abuse while a child. Shortly after attending therapy as an adult, she confronted Applicant, then told her mother. Shortly thereafter, in 2015, Applicant and his wife divorced. (Tr 28) Applicant contends that his stepdaughter has since forgiven him, and that he will [n]ever fall prey to [this conduct] again." (Answer at 2) He has never attended any behavioral counseling. (Tr. 29) When confronted by an investigative agent in March 2020 about this conduct, he initially denied this activity occurred. (Tr. 29-30) He did not disclose the activity until asked a third time. He lied about this conduct because he was embarrassed. (Tr. 30)

In February 2012, Applicant was terminated from his employment after testing positive for cocaine. (GE 4 at 13) He denies that he has ever used cocaine and contends that the test result was unreliable because it was conducted at an unsanctioned health clinic out of the country. (Answer at 2) Applicant was working out of the country at the time. There is no additional record evidence of any additional failed drug tests, nor is there any other evidence that Applicant may have used illegal drugs in the past.

Applicant has approximately \$58,000 in delinquent debt. (Answer at 4) He attributes his financial problems to several months of unemployment between 2017 and 2018. He admits all of the financial debts alleged in the SOR but has done nothing to satisfy them.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (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 required to be considered 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 overall 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 ¶ 1(d) 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. 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 applicant or proven by Department Counsel. ..." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

## **Analysis**

### **Guideline D: Sexual Behavior**

Under this guideline, "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" is a security concern. Applicant's molestation of his stepdaughter triggers the application of AG ¶ 13(a), "sexual behavior of a criminal nature, whether or not

the individual has been prosecuted; and AG ¶ 13(c), “sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.”

The following mitigating conditions are potentially applicable under AG ¶ 14:

(a) the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;

(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

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

Applicant was an adult when he sexually abused his stepdaughter. AG ¶ 14(a) does not apply.

Applicant’s behavior occurred nearly 30 years ago, and there is no evidence of any recurrent conduct. Conversely, the nature and seriousness of the conduct is extraordinary, as he molested his then-teenage stepdaughter nearly 50 times over a two-year period. Compounding the seriousness of the conduct, he was never held criminally liable for the conduct, he has never engaged in therapy, and he believes that the conduct was somehow less egregious because it was limited to inappropriate touching rather than sexual intercourse. Moreover, when confronted about the sexual abuse during his background interview, he initially denied engaging in it. Consequently, the passage of time does not mitigate this behavior. I conclude that none of the remaining mitigating conditions as set forth above apply, and that Applicant has failed to mitigate the sexual behavior security concerns.

### **Guideline E: Drug Involvement**

Under this guideline, “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.” (AG ¶ 15)

Applicant’s misconduct as discussed under the Guideline D analysis also generates a security concern under AG ¶ 16(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.” AG ¶ 16(e) is also triggered by Applicant’s 2012 failure of a drug test.

Given Applicant’s lack of credibility when confronted about his history of sexually abusing his stepdaughter, I do not find his explanation regarding the reliability of the administration of the drug test credible. Nevertheless, there is no record evidence that Applicant abused cocaine before or after testing positive for it in 2012. Under these circumstances, AG ¶ 17(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,” applies. I resolve subparagraph 2.b in Applicant’s favor.

Applicant’s sexual misconduct is disqualifying under Guideline E for the same reasons as those set forth in the Guideline D analysis discussed earlier.

### **Guideline F: Financial Considerations**

Under this concern, “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.” (AG ¶ 18)

Over the years, Applicant has incurred approximately \$58,000 of delinquent debt that remains outstanding. Under these circumstances, AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting’s financial obligations,” apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

Applicant contends that these debts corresponded with a lengthy period of unemployment between 2017 and 2018. Even if this assertion is true, Applicant provided no evidence of any effort to satisfy these debts or to otherwise dispose of them. I conclude

that none of the mitigating conditions apply. Applicant has failed to mitigate the financial considerations security concerns.

### **Whole-Person Concept**

I have considered the whole-person factors in my analysis of the facts, and they do not warrant a favorable conclusion. Applicant has failed to mitigate the 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 D:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a – 3.y:	Against Applicant

### **Conclusion**

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

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Marc E. Curry  
Administrative Judge