



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



In the matter of:)
)
) ISCR Case No. 21-02551
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esquire, Department Counsel
For Applicant: *Pro se*

03/07/2023

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding criminal conduct and sexual behavior. Eligibility for a security clearance is denied.

Statement of the Case

On March 27, 2019, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On May 11, 2022, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline J (Criminal Conduct) and Guideline D (Sexual Behavior) and detailed reasons why the DCSA adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a

security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On May 24, 2022, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on September 12, 2022, and he was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on September 15, 2022. His response was due on October 15, 2022. Applicant chose not to respond to the FORM, for as of October 31, 2022, no response had been received. The case was assigned to me on December 2, 2022. The record closed on October 31, 2022.

Findings of Fact

In his response to the SOR, Applicant admitted, with comments, nearly all the SOR allegations pertaining to criminal conduct (SOR ¶¶ 1.a., 1.b., and 1.d.). He did not specifically address the allegation for the same conduct cross-referenced as sexual behavior (SOR ¶ 2.a.).

Background

Applicant is a 51-year-old employee of a defense contractor. He has been serving initially as an operation engineer and subsequently as lead operation engineer since he was employed in February 2019. He was previously employed by other employers as a journeyman electrician (September 2014 until February 2019, and October 2007 until January 2013), and part time in building maintenance (May 2013 until February 2014). He received a Bachelor of Science in electrical engineering in 2018. He has never served with the U.S. military. He was granted an interim security clearance in 2019, and it was revoked with the issuance of the SOR in 2022. He was married in 1994 and divorced in 2006. He has three children, born in 1991, 1993, and 1998.

Criminal Conduct and Sexual Behavior

On April 5, 2002, Applicant was arrested and charged with battery against a household member. That household member was his wife at that time. Applicant contended that his wife came before the judge and requested that the charge be dropped, and that he did not spend any time in jail. (Answer to the SOR at 2) She confirmed that she went before the judge, and stated that from her knowledge, Applicant was never convicted of the charge. (Statement, dated May 17, 2022, attached to the Answer to the SOR) Nevertheless, despite their understanding, he was subsequently convicted of the charge and sentence was deferred 364 days on the condition that he have no further unlawful contact with the victim. He also had to pay \$51.00 in fees. (Item 4 at 5-6)

On June 29, 2017, Applicant was reportedly arrested and charged with contempt of court, a misdemeanor. No circumstances regarding the incident have been reported. (Item 4) Applicant does not recollect any such charge, claiming that he attended every court appearance he was asked to attend. (Answer to the SOR at 2) None of the court records in evidence reflect this incident.

On June 30, 2017, Applicant was arrested and charged in two separate cases with a variety of criminal sexual offences with two minors (BD and BR), his then-cohabitant's minor daughters: (1) criminal sexual penetration in the first degree (child under 13) to engage in the penetration, to any extent, of his fingers into her genital or anal openings, between January 1, 2011, and May 31, 2016; (2) criminal sexual penetration in the first degree (child under 13) to engage in the penetration, to any extent, of his fingers into her genital or anal openings, between January 1, 2011, and May 31, 2016; (3) criminal sexual contact in the second degree (child under 13) to touch or apply force to the unclothed intimate parts, to wit: vulva, when she was twelve years of age or younger, between January 1, 2011, and May 31, 2016; (4) criminal sexual contact in the second degree (child under 13) to touch or apply force to the unclothed intimate parts, to wit: buttocks, when she was twelve years of age or younger, between January 1, 2011, and May 31, 2016; (5) criminal sexual contact in the third degree (child under 13) to cause the child to touch Applicant's intimate parts, to wit: his penis, when she was twelve years of age or younger, between January 1, 2011, and May 31, 2016; (6-8) attempts to commit criminal sexual contact in the second or third degrees (child under 13) by intending and beginning to do an act but failing to commit the offenses, between January 1, 2011, and May 31, 2016; and (9) criminal sexual contact in the fourth degree (child between 13 and 18) to touch or apply force to the intimate parts, to wit: vulva, when she was less than eighteen years of age, between November 1, 2011, and February 29, 2014. He was released from pre-trial confinement on July 10, 2017, and arraigned on August 21, 2017. (Item 5; Item 6)

Although the bond recommended by the state was \$50,000, bond for the first eight charges was set at \$15,000. On July 26, 2018, charges 6-8 were dismissed due to a "structural defect." On February 14, 2019, the defense motion to dismiss the grand jury indictment for charges 1-5 was granted without prejudice because the state declared an intention to present the case to the grand jury for reconsideration of a grand jury indictment. (Item 6) On March 7, 2019, the grand jury re-indicted Applicant for similar but modified criminal sexual offences regarding one of his then-cohabitant's minor daughters (BR): (1) criminal sexual penetration in the first degree (child under 13) to engage in cunnilingus, he rubbed her vulva and put his tongue and mouth on her vulva, between December 1, 2012, and May 31, 2016; (2) criminal sexual penetration in the first degree (child under 13) to engage in cunnilingus, he put his tongue and mouth on her vulva, between January 1, 2008, and December 31, 2012; (3) criminal sexual contact of a minor in the second degree (child under 13) to touch or apply force to the unclothed intimate parts, to wit: vulva, with his hand, when she was twelve years of age or younger, between January 1, 2008, and December 31, 2012; (4) criminal sexual contact of a minor in the second degree (child under 13) to touch or apply force to the unclothed intimate parts, to wit: vulva, with his hand, when she was twelve years of age or younger, between January 1, 2008, and December 31, 2012, while her sister was present; (5) criminal sexual contact

of a minor in the third degree (child under 13) to intentionally cause the child to touch Applicant's intimate parts, to wit: his penis with her hand, when she was twelve years of age or younger, between December 1, 2012, and May 31, 2016; (6) attempt to commit a felony, to wit: criminal sexual contact of a minor in the second degree (child under 13) by intending and beginning to do an act by pulling down her pants to take them off to touch her vulva but failing to commit the offense when she went to another room to stop him, between December 1, 2012, and May 31, 2016; (7) criminal sexual contact of a minor in the second degree (child under 13) to touch or apply force to the unclothed intimate parts, to wit: vulva, when she was twelve years of age or younger, between December 1, 2012, and May 31, 2016; and (8) criminal sexual penetration in the first degree (child under 13) to engage in cunnilingus, he put his tongue and mouth on her vulva, between December 1, 2012, and May 31, 2016. (Item 7)

Although the bond recommended by the state was \$100,000, bond for the new eight charges was set at \$20,000. On December 12, 2019, as part of a plea agreement, Applicant entered a plea of no contest to the offenses of contributing to the delinquency of a minor to lesser fourth degree felonies associated with only the first three of the grand jury charges. On January 8, 2020, those charges were conditionally discharged. The remaining charges were dismissed as part of the plea agreement. Applicant was sentenced and placed on probation for a period of one and one-half years. Among standard and special conditions of his probation, he was prohibited from consuming or possessing alcoholic beverages; prohibited from possessing any weapons; required to maintain full time employment; required to submit to random urinalysis; required to perform 80 hours of community service; required to pay \$35 per month probation costs; and prohibited from having direct or indirect contact with the minor victim or her mother. (Item 7; Item 4) There is no evidence to indicate that Applicant was required to register as a sex offender.

The remaining charge associated with Applicant's criminal sexual contact of a minor in the fourth degree with BD (child between 13 and 18) to touch or apply force to the intimate parts, to wit: vulva, when she was less than eighteen years of age, between November 1, 2011, and February 29, 2014, was resolved on February 28, 2020, by the same judge who presided over the other charges. Applicant had also entered a plea of no contest to this charge as well. On February 28, 2020, the charge was conditionally discharged. Applicant was sentenced and placed on probation for a period of one and one-half years, to be served concurrently with the other probation. Identical probation requirements and prohibitions were set forth. (Item 5) Once again, there is no evidence to indicate that Applicant was required to register as a sex offender.

With respect to the criminal sexual offenses with which he was charged, Applicant claims that at the time: "celebrities and normal citizens around the nation were being charged with charges like mine I was advised by my lawyer and chose (sic) to plead (sic) no contest and accept the plea bargain because I did not want to stand in front of a jury and get wrongfully convicted of something I did not do." (Answer to the SOR at 2)

Applicant argues that a conditional discharge is not a felony conviction. His attorney contends that it is a special and rare resolution for a criminal case. Once a

defendant successfully completes his probation, his case is over, and there is no conviction. Applicant submitted an opinion from the state court of appeals to support his characterization of a conditional discharge. (Answer to the SOR at 4; Statement from Applicant's attorney at 1, attached to Answer to the SOR)

Character References

Several coworkers in senior management positions have known Applicant since he joined his employer in February 2019. They all agree that he is a valuable team member and model employee who has a very strong work ethic, is efficient, diligent, and extremely competent, as well as very honest, dependable, reliable, and trustworthy. One individual noted that during his period of probation, Applicant was unable to support certain missions because he was unable to leave the state and not able to bring electronic devices, such as his anklet, into the workspace. (Character references attached to Answer to the SOR at 30-34)

Two of Applicant's children, including a son who is a member of the U.S. Marine Corps, are even more supportive of him. They describe him as very loving and caring. Character references attached to Answer to the SOR at 35-36)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.” “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) “Substantial evidence” is “more than a scintilla but less than a preponderance.” (See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994))

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531)

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (See Exec. Or. 10865 § 7) Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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 avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30: 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.

The guideline notes two conditions under AG ¶ 31 that could raise security concerns:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (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.

AG ¶ 31(b) has been established. AG ¶ 31(a) has not been established because while there is one minor misdemeanor reflected in the record, there is no pattern of minor offenses. On June 30, 2017, Applicant was arrested and charged in two separate cases with a variety of criminal sexual offenses with two minors, his then-cohabitant's minor daughters. On December 12, 2019, as part of a plea agreement, Applicant entered a plea of no contest to the offenses of contributing to the delinquency of a minor (child under 13) to lesser fourth degree felonies associated with only the first three of the grand jury charges. On January 8, 2020, those charges were conditionally discharged. The remaining charges were dismissed as part of the plea agreement. Applicant was sentenced and placed on probation for a period of one and one-half years. The remaining charge associated with Applicant's criminal sexual contact of a minor in the fourth degree (child between 13 and 18) was resolved on February 28, 2020, by the same judge who presided over the other charges. Applicant had also entered a plea of no contest to this charge as well. On February 28, 2020, the charge was conditionally discharged. Applicant was sentenced and placed on probation for a period of one and one-half years, to be served concurrently with the other probation. There is no evidence to indicate that Applicant was required to register as a sex offender.

As noted above, Applicant denied the underlying conduct of the charges to which he entered pleas of no contest, and argues that a conditional discharge is not a felony conviction. His attorney claimed that once a defendant successfully completes his probation, his case is over, and there is no conviction. The Government countered that despite his insistence of innocence, Applicant is collaterally estopped from denying that he engaged in the behavior underlying his felony "convictions," even on an *Alford* plea, citing ISCR Case No. 02-03248 at 3 (App. Bd. Apr. 27, 2005). *Nolo Contendere* means "I will not contest it." It is a plea to a criminal charge that has a similar effect to pleading guilty except that, because the individual has not admitted guilt, the plea cannot be used against that individual in any other subsequent litigation. Department Counsel noted that under the laws of the state where the "convictions" took place, a defendant may not be criminally sentenced unless there is a legal conviction of a crime, and that a conviction may follow a plea of no contest, citing the statute in question. (Item 8) This is not a unique interpretation of the law, for probation is a sentence, after a criminal conviction, that releases a person into the community under the supervision of a probation officer. Additionally, the Government noted that the fact that the criminal charge may have been dismissed following the period of deferred sentencing does not preclude a judge from

determining that Applicant engaged in the underlying misconduct, citing ISCR Case No. 08-08606 at 1 (App. Bd. Dec. 4, 2009). In this instance, there is substantial evidence of criminal conduct, and Applicant's argument that he was not convicted of a felony is immaterial.

The guideline also includes examples of conditions under AG ¶ 32 that could mitigate security concerns arising from Criminal Conduct:

(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.

Neither condition applies. The incidents for which Applicant entered a plea of no contest were alleged to have occurred most recently in December 2012; February 2014; and May 2016 – all after years of such conduct involving two minor victims. The charges were conditionally discharged in January 2020 and in February 2020, and probation was to be served concurrently for a period of one and one-half years following the most recent court action. In other words, Applicant's probation essentially was completed in mid-2021. Since the legal process commenced, there is no evidence that Applicant ever underwent counseling, therapy, treatment, or assessments to address the conduct leading to those charges.

While there are positive factors present, such as no recurrence of criminal activity since the alleged last incident and an excellent work record, there is also another significant negative factor: Applicant's failure to take any responsibility for his criminal misconduct. As noted by Department Counsel, this failure perpetuates doubts about his judgment, trustworthiness, and reliability, and his current willingness to comply with laws, rules, and regulations, citing ISCR Case No. 17-01680 at 4 (App. Bd. Jul. 19, 2019) (When an applicant is unwilling or unable to accept responsibility for his or her own actions, such a failure is evidence that detracts from a finding of reform and rehabilitation.); ISCR Case No. 04-04264 at 3 n.2 (App. Bd. Sep. 8, 2006) (It is a well-established principle that the first step on the road to rehabilitation is to fully admit one's misconduct.) Because of the seriousness and length of time of the sexual criminal conduct in which Applicant participated, the mere simple passage of time warrants a lengthier period without recurrence. See, e.g., ISCR Case No. 17-01680 at 4 (App. Bd. Jul. 19, 2019); ISCR Case No. 08-03726 at 3 (App. Bd. Oct. 2, 2009) (The more serious or long-term an applicant's conduct is, the stronger the evidence of rehabilitation needs to be for the Judge to find the applicant has overcome the negative security implications of that conduct.)

Guideline D, Sexual Behavior

The security concern relating to the guideline for Sexual Behavior is set out in AG ¶ 12:

The Concern. 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 13:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (b) a pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop;
- (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.

AG ¶¶ 13(a), 13(b), 13(c) and 13(d) have been established. My discussion related to Applicant's criminal conduct is adopted herein. On June 30, 2017, Applicant was arrested and charged in two separate cases with a variety of criminal sexual offences – the specifics which need not be repeated here – with two minors, his then-cohabitant's minor daughters. On December 12, 2019, as part of a plea agreement, Applicant entered a plea of no contest to the offenses of contributing to the delinquency of a minor (child under 13) to lesser fourth degree felonies associated with only the first three of the grand jury charges. On January 8, 2020, those charges were conditionally discharged. The remaining charges were dismissed as part of the plea agreement. Applicant was sentenced and placed on probation for a period of one and one-half years. The remaining charge associated with Applicant's criminal sexual contact of a minor in the fourth degree (child between 13 and 18) was resolved on February 28, 2020, by the same judge who presided over the other charges. Applicant had also entered a plea of no contest to this charge as well. On February 28, 2020, the charge was conditionally discharged. Applicant was sentenced and placed on probation for a period of one and one-half years, to be served concurrently with the other probation. There is no evidence to indicate that Applicant was required to register as a sex offender. The repeated pattern of his sexual

behavior over a lengthy period was seemingly self-destructive (to his co-habitant relationship and his career), and high-risk since some of it was of a criminal nature. It reflected a lack of discretion and judgment. It is unclear if the behavior was compulsive because Appellant was able to eventually stop continuing it, but there was no treatment or counseling to assess the actual psychological nature of the behavior. He was vulnerable to coercion, exploitation, or duress during the period that he kept the behavior unreported between himself and the two minor victims.

The guideline also includes examples of conditions that could mitigate security concerns arising from sexual behavior 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;
- (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.

None of the mitigating conditions apply. The behavior occurred while Appellant was a mature individual residing with a co-habitant man with her two minor children at home. Appellant failed to even consider entering a treatment or counseling program to possibly put to rest the potential issue as to whether he had a sexual dysfunction, or if the behavior is likely to recur.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); see also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence in favor of mitigating Applicant's criminal conduct and sexual behavior. Applicant is a 51-year-old employee of a defense contractor. He has been serving initially as an operation engineer and subsequently as lead operation engineer since he was employed in February 2019. He was previously employed by other employers as a journeyman electrician and part time in building maintenance. He received a Bachelor of Science in electrical engineering in 2018. He was granted an interim security clearance in 2019, and it was revoked with the issuance of the SOR in 2022. He was married in 1994 and divorced in 2006. He has three children, born in 1991, 1993, and 1998. His coworkers are highly supportive of him. He gets some credit for initially identifying his alleged criminal conduct and sexual behavior.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. On June 30, 2017, Applicant was arrested and charged in two separate cases with a variety of criminal sexual offences with two minors, his then-cohabitant's minor daughters. On December 12, 2019, as part of a plea agreement, Applicant entered a plea of no contest to the offenses of contributing to the delinquency of a minor (child under 13) to lesser fourth degree felonies associated with only the first three of the grand jury charges. On January 8, 2020, those charges were conditionally discharged. The remaining charges were dismissed as part of the plea agreement. Applicant was sentenced and placed on probation for a period of one and one-half years. The remaining charge associated with Applicant's criminal sexual contact of a minor in the fourth degree (child between 13 and 18) was resolved on February 28, 2020, by the same judge who presided over the other charges. Applicant had also entered a plea of no contest to the charge to this charge as well. On February 28, 2020, the charge was conditionally discharged. Applicant was sentenced and placed on probation for a period of one and one-half years, to be served concurrently with the other probation. Applicant's failure to take any responsibility for his criminal misconduct perpetuates doubts about his judgment, trustworthiness, and reliability, and his current willingness to comply with laws, rules, and regulations. Accordingly, I conclude Applicant has failed to mitigate the security concerns arising from his criminal conduct and sexual behavior. See SEAD 4, App. A, ¶¶ 2(d) (1) through AG 2(d) (9).

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
Subparagraphs 1.a. through 1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Paragraph 2, Guideline D:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge