



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



In the matter of: )  
)  
) WHS-C-Case No. 23-00307-R  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Karen Moreno-Sayles, Esq. and Nicole A. Smith, Esq., Department  
Counsel  
For Applicant: *Pro se*

05/31/2023

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the sexual behavior, criminal conduct, or personal  
conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 11, 2022, the Department of Defense (DOD) Consolidated Adjudication  
Service (CAS) issued Applicant a Statement of Reasons (SOR) detailing security  
concerns under Guideline D, sexual behavior and Guideline J, criminal conduct. The DOD  
acted under Executive Order (EO) 10865, *Safeguarding Classified Information within  
Industry* (February 20, 1960), as amended; DOD Manual 5200.02, *Procedures for the  
DOD Personnel Security Program (PSP)*, effective on April 3, 2017 (DOD Manual  
5200.02); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

On September 9, 2022, Applicant submitted a response to the SOR. On October  
26, 2022, the DOD CAS revoked Applicant's security clearance.

## **Procedural Issue**

On December 2, 2022, Under Secretary of Defense (Intelligence & Security) Ronald Moultrie issued a memorandum that provided that any individual whose clearance eligibility was revoked or denied between September 30, 2022, and the date of that memorandum, shall be afforded the opportunity to pursue the DOHA hearing and appeal process set forth in DOD Directive 5220.6. On October 14, 2022, the DOD CAS denied or revoked Applicant's eligibility for access to classified information and he appealed that denial or revocation under the provisions of DODM 5200.02. As a result of Under Secretary Moultrie's Memo, Applicant was given the opportunity to receive the process set forth in DOD Directive 5220.6, and he elected that process. (Tr. 4; HE IV)

On February 23, 2023, the Government issued Applicant an amended SOR (SOR-A1), alleging disqualifying conduct under Guideline E, personal conduct. On March 9, 2023, Applicant submitted a written answer denying all these allegations (Applicant attached documents to his response). The case was assigned to me on March 14, 2023.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 16, 2023, and the hearing was held as scheduled on April 5, 2023. The Government offered exhibits (GE) 1-15, which were admitted into evidence without objection. The Government's exhibit list was marked as Hearing Exhibit (HE) I. Applicant testified, called two witnesses, and offered Applicant exhibits (AE) A1-A274 (these documents correspond with the allegations in SOR-A1), which were admitted without objection. During the course of the April 5, 2023 hearing, Department Counsel moved to amend the SOR to add two additional allegations under Guideline E (SOR-A2).

I granted the motion and a continuance until April 26, 2023, to allow Applicant additional time to respond to the SOR-A2 allegations. He provided a written response that contained his denials to the SOR-A2 allegations and also summarized his position regarding the original SOR allegations and those contained in SOR-A1. This document was admitted into evidence as AE B1-B10. Additionally, AE C-E were admitted without objection. I also attached to the record HE II, which contains emails concerning Applicant's submission of his written closing argument. His written closing argument is marked as HE III. DOHA received the hearing transcript from the April 5, 2023 hearing on April 7, 2023 (Tr1). It received the transcript from the April 26, 2023 hearing on May 1, 2023 (Tr2).

## **Findings of Fact**

After a review of the pleadings and evidence, I make the following findings of fact.

Applicant is a 53-year-old civilian employee of a defense agency. He has worked in his current position since October 2018. He is a security program manager. He has worked as a security manager or specialist for other defense organizations or federal agencies since 2011, and from 2002 to 2009. I note that he worked for DOHA as a personnel security specialist from May 2002 to July 2002, before I became employed by

DOHA in 2004. Before this case was assigned to me, I had no knowledge of Applicant. (Tr1. 7; GE 1)

Applicant is twice divorced. His first marriage was from 1993 to 2012 (his wife from this marriage will be referred to as W1). He married a second time in 2014 and divorced his second wife (W2) in 2017. He listed having two children, a boy age 22, and a girl, age 20, on his August 2019 security clearance application (GE 1). He also listed a stepdaughter (SD1), age 23, on GE 1. A second former stepdaughter (SD2), the alleged victim of SOR ¶ 1.a, was not listed by Applicant on GE1, but he referred to her throughout his testimony and documents as his daughter or stepdaughter. Her mother is W2. (Tr1.; GE 4-6)

Applicant served in the U.S. Army from 1988 to 1999 and was honorably discharged. He was injured while serving in Afghanistan and received a 100% disability rating from the Department of Veterans Affairs (VA). He holds an associate degree, two bachelor's degrees and a master's degree. He has held a security clearance since 1992. (Tr. 8, 79; GE 1)

### **Guideline D and J Allegations (Original SOR)**

The original SOR alleged concerns under the guidelines for sexual behavior and criminal conduct. The form of these allegations were in a rambling narrative. In order to make specific findings of fact, I asked Department Counsel to specify the conduct that was being alleged in the SOR. She did so, on the record, and those allegations are also reflected in HE V. Under Guideline D, it is alleged that in or around November 2016 and April 2017, while stationed at an overseas military location (ML-1), Applicant engaged in criminal sexual behavior when he sexually abused and/or made sexually abusive contacts with his stepdaughter (SD2) (SOR 1.a). Under Guideline J, it is alleged that Applicant was arrested and indicted on October 14, 2021, in U.S. District Court on two counts of engaging or attempting to engage in sexual contact with SD1 and SD2 (SOR 2.a); the original indictment was voided by a superseding indictment filed on June 9, 2022. The superseding indictment charged Applicant with four counts of sexual contacts or sexual acts against SD2 at ML-1 and against SD1 (when she was between the ages of 12 and 16, while residing at an overseas military location (ML-2) (SOR 2.b). (Tr1. 14-18, 26-27; GE 7-8, 86; HE V; SOR)

From June 2003 to May 2005, Applicant was employed by a DOD agency at ML-2. From May 2005 to June 2009, he was employed by a different DOD agency and his duty location was at ML-2. During both of the above timeframes, Applicant resided in military housing on the installations. He was married to W1 during this time. SD1 was born in 1989 and was between 13 and 19 years old during the times the family was residing overseas at ML-2. (GE 1-3)

From October 2016 to October 2018, Applicant was employed by a DOD agency that assigned him to an overseas detail for this entire time period. This assignment was at ML-1. He was married to W2 at the time. W2 and SD2 resided with Applicant in military base housing. In April 2017, SD2 attended her senior high school trip in the United States.

Applicant, W2, and his stepson also traveled to the same state for their own vacation at the same time as the senior trip. Applicant gave conflicting testimony about whether he was in contact with SD2 during their time in the United States, other than seeing each other at the airport. He first claimed he had no interaction with the senior trip students (including SD2) until they were at the airport for their return flight to ML-1. Later, he stated he went to the house where the seniors were all staying and talked with SD2. Applicant claimed it was at this time that SD2 told him she had gotten a tattoo and asked him not to tell her mother. He claimed not to have seen the tattoo at that time. He told her to get it removed. He claimed he told W2 about the tattoo right away. During his background interview (BI) by agents in August 2019, Applicant discussed events related to the senior trip. While he discussed SD2's tattoo during the interview, he made no mention of any concerns he had about SD2 getting a body piercing during that trip. (Tr1. 100-103, 110; GE 1, 4)

On April 27, 2017, SD2 contacted the Naval Criminal Investigative Service (NCIS) on ML-1 and reported that Applicant touched her in an inappropriate manner. She gave a formal statement where she alleged that on April 26, 2017, Applicant came into her bedroom and asked her to take her clothes off so he could view her tattoos and body piercings. He then touched her with his hands by spreading her labia apart to look at her vagina for piercings. She also stated that Applicant digitally penetrated her vagina one time, under the guise of checking to see if she was still a virgin. SD2 was 18 years old at the time of these events. She further related that over the past four years, Applicant administered corporal punishment in the form of spankings to the buttocks area with a belt and his hands while she was naked. (Tr1. 107; GE 5)

Later, on April 27, 2017, Applicant was interviewed in a noncustodial setting by the NCIS about SD2's allegations. He admitted spanking SD2 with a belt while her pants and underwear were down. He also admitted that on another occasion, he had SD2 disrobe and was going to spank her, but he chose to verbally reprimand her instead. He also admitted checking her for piercings and tattoos while she laid on her bed and he moved her shorts and underwear to the side and touched her vagina to expose any piercings. He denied ever penetrating SD2's vagina in any manner. (GE 5)

During his hearing testimony, Applicant admitted that he checked SD2 for body piercings, but denied that he touched her vagina while doing so. He claimed that he was concerned about her health. He stated that she was topless and in her panties during his viewing. He had her lay down and he claimed: "I grabbed the top of her panties and I just looked at it and that was it." He admitted telling his boss, Mr. C, that he viewed her genital area. He claimed W2, SD2's mother, was in the house while this viewing took place, but she did not want to have anything to do with her daughter then. Had he seen a piercing, he would have forced her to go to the hospital to get it removed, even though she was 18 years old. (Tr1. 103-104, 106-111, 115, 153)

Applicant also admitted that he spanked her bare buttocks with a belt. He stated that he did not believe spanking someone on their bare buttocks who is 15 or 16 was a sexual act. He put it as follows: "the disciplinary action that was good enough for me when I was a child, is certainly good enough for her" (in reference to SD2). He admitted asking

SD2 if she was a virgin, but he denied checking her physically to confirm it. He also admitted to spanking SD1 on her bare buttocks when she was a minor living in his house. (Tr1. 112, 114-115, 126)

On April 27, 2017, based upon the accusations made by SD2, the appropriate commanding officer at ML-1 issued to Applicant two protective orders (PO) in favor of W2 and SD2. The reason for the protective orders was to protect the integrity of the ongoing investigation into the allegations that Applicant committed sexual assault and abuse against SD2. The POs restrained Applicant from having any type of contact (face-to-face, written, or electronic) with either W2 or SD2 through May 27, 2017. On May 2, 2017, Applicant violated this order by placing a note on or in the car driven by W2 and SD2. Two follow-up POs were issued on May 5, 2017. Applicant was issued a debarment order from ML-1 on May 5, 2017, for violating the POs. The effect of the debarment required Applicant to immediately leave ML-1, without the rest of his family. On May 9, 2017, Applicant was issued travel orders sending him from ML-1 to his parent command in San Antonio. Because of the debarment, he was unable to complete his two-year detail to ML-1. W2 and SD2 remained at ML-1 after Applicant departed. They were relocated to a different location sometime later. Applicant stated that since he departed ML-1, he has not seen W2 or SD2. (Tr1. 116-118, 134; GE 9, 11-12; SOR answer (April 27, 2017 POs are included))

In March 2018, SD1 accused Applicant of sexually abusing her. That information became available to the NCIS who documented it in a report dated January 4, 2021.

Applicant denied all the allegations of sexual abuse by both SD1 and SD2. He believes that W1 hates him and influenced SD1 to make the allegations against him. He stated that SD2 had mental health issues. He claimed that she got into trouble for pursuing relationships with younger girls. He also claimed that she engaged in self-harm on occasions. He also claimed that SD2 demonstrated bizarre behavior while they were stationed at ML-1 by walking around the house naked. He also claimed that he sent SD2 to a psychiatrist because of her behavior. He did not provide any evidence other than his testimony in support of these assertions. (Tr1. 38, 84, 93, 98; GE 4, p.19)

On October 14, 2021, based upon probable cause, Applicant was indicted by a grand jury in Federal District Court for committing abusive sexual contact on SD2 between November 1, 2016, and April 27, 2017 (Count 1); and for committing sexual abuse on SD1, between June 1, 2003, and October 5, 2005 (Count 2). Based upon the forgoing charges, Applicant was arrested in November 2021, and jailed pending raising bail. On June 9, 2022, a superseding indictment, based upon probable cause, was filed against Applicant. In that indictment, Applicant was charged with four counts: On April 26, 2017, he committed abusive sexual contact against SD2 (Count 1); Between June 1, 2003, and September 30, 2005, he committed sexual abuse on SD1, a minor between the ages of 12 and 16 (Count 2); Between September 30, 2004, and September 30, 2006, he attempted to engage in a sexual act by using force against SD1 (Count 3); Between January 1, 2003, and December 31, 2008, he attempted to engage in a sexual act with SD1 using threats (Count 4). Applicant is out of jail on a bail bond. He is required to wear

an ankle monitor. His criminal trial is currently scheduled for October 2023. (Tr1. 86, 118-122; GE 7-8)

### **Guideline E Allegations (SOR A-1)**

SOR-A1 alleged concerns under Guideline E. Specifically, it alleged that Applicant falsified his July 2013 security clearance application (SCA), Section 13A, and his September 2011, SCA, Section 13C, when he failed to disclose that he resigned from a position in August 2011, under unfavorable circumstances, as he was required to do. (SOR-A1 3.a-3.b, 3.e) It also alleged that Applicant falsified his 2013 SCA, Section 13A, and his September 2011, SCA, Section 13C, when he failed to disclose that he received a two-day suspension from work in February or March 2010, and a 14-day suspension in July or August 2010 for work misconduct, as he was required to do. Applicant denied all these allegations in his written response. (SOR-A1 3.c-3.d, 3.f-3.g)

SOR-A2 alleged concerns under Guideline E. Specifically, it alleged that Applicant falsified his August 2019 SCA, Section 13A, when he stated that he left his position because he had completed his two-year detail, thereby deliberately failing to disclose that he was removed from his position on May 5, 2017, because he was indefinitely debarred from his work location before the end of his assigned detail there. (SOR-A2 3.h) It further alleged that Applicant falsified his August 2019 SCA, Section 13A, when asked if he had left any employment after allegations of misconduct, by deliberately failing to disclose that he was removed from his position on May 5, 2017, because he was indefinitely debarred from his work location before the end of his assigned detail there. (SOR-A2 3.i) Applicant denied all these allegations in his written response (AE B1-B10).

From approximately June 2009 to August 2011, Applicant was employed by a DOD agency in the position of security manager. During the course of that employment, he received several disciplinary actions, to include: (1) a November 30, 2009 written counseling for being disrespectful to a work supervisor; (2) a two-day suspension on March 29, 2010, for failing to accomplish several elements of his assignment and not complying with higher-level direction; and (3) a 14-day suspension for failing to follow proper procedures by not informing his supervisor of a meeting Applicant scheduled to present a plan proposing organizational change to his supervisor's organization. (GE 4, p. 7; AE A34, A254-A255)

During his August 2019 BI, Applicant admitted the two suspensions, but denied the counseling. He also admitted the suspensions in his hearing testimony, but initially denied the counseling. When reminded that the written counseling was a part of his exhibits (AE A34), he claimed that it was produced after the fact. Applicant failed to list these incidents on his 2011 (AE 3, p. 23 of Section 13C) and 2013 SCAs (AE 2, p. 15 of Section 13A), as he was required to do. The counseling was not specifically alleged as an incident that should have been listed in the SCAs, so I will not use that evidence for disqualification purposes, but I may use it to assess Applicant's credibility, the applicability of any mitigating circumstances, and in my whole-person analysis. Applicant has an extensive background in security positions, has completed numerous SCAs during his career, and has assisted others in completing SCAs. He admitted in his testimony that he

did not accurately report the information about his previous two work suspensions. (Tr1. 137, 139-147; GE 2-3)

Applicant was issued a removal letter for misconduct by his agency on January 6, 2011. Applicant contested this action before the Merit Systems Protection Board (MSPB). On May 9, 2011, Applicant and the agency entered into a settlement agreement accepted by the MSPB. As part of the agreement, the agency rescinded the actions removing Applicant from employment for cause and Applicant agreed to resign from his position effective in August 2011. Other than requiring the agency to remove the removal documentation from Applicant's official personnel records, the agreement had no effect on his two prior disciplinary suspensions. Applicant also agreed never to apply to the agency for future employment. (AE A1-A3)

Applicant completed two SCAs on September 15, 2011 and July 1, 2013. Applicant failed to accurately state that in August 2011, he left employment with his agency by mutual agreement following charges or allegations of misconduct, or under unfavorable circumstances on his 2011 (AE 3, p. 23 of Section 13C) and 2013 SCAs (AE 2, p. 15 of Section 13A), as he was required to do. In his 2013 SCA, he specifically stated his reason for leaving the agency was: "Career progression to a position at a federal government agency in law enforcement." During his BI, Applicant initially denied his leaving employment by mutual agreement after allegations of misconduct, as discussed above. He was then confronted by the agent and admitted he left the agency on bad terms after he raised allegations of misconduct by management. (GE 2-4)

### **Guideline E Allegations (SOR A-2)**

On August 10, 2019, Applicant completed another SCA. This followed his departure from the detail at ML-1 because of his debarment from the installation in May 2017. In completing his SCA concerning his employment at ML-1 from October 2016 to October 2018, he was asked to provide the reason for leaving this employment activity and stated: "Two year detail overseas completed." He failed to provide any information about the sexual misconduct allegations that led to the POs, which were violated leading to his debarment from the installation. (GE 1, 4, 9, 11-12)

On GE 1, Applicant also answered "no" to the question of whether he left any employment in the last seven years because of being fired, or quitting after being told he would be fired, or he left by mutual agreement following charges or allegations of misconduct, or he left by mutual agreement because of unsatisfactory performance. When Applicant referred in this SCA to his earlier employment at the agency where he worked from June 2009 to August 2011, he again stated his reason for leaving was: "Career progression to a position at a federal agency in law enforcement." (GE 1)

During his hearing testimony, he stated that he answered as he did on GE 1, about his May 2017 departure from ML-1, because he returned to his parent organization in the United States upon his debarment. He agreed that he left ML-1 after allegations of misconduct. His supervisor at ML-1, Mr. C, believed that Applicant was not fired from his

position at ML-1 by his command and that he did not leave ML-1 by mutual agreement. (Tr. 135-136; AE E1-E5)

## **Witness Testimony**

**Applicant's testimony.** I found his testimony to be inconsistent, misleading, and self-serving. There were a number of times where he provided inconsistent information during his testimony with either earlier testimony or previous statements.

**Applicant's supervisor at ML-1, Mr. C.** He has been a security specialist for a DOD agency for 25 years He was at ML-1 from November 2015 to November 2018 and he was Applicant's supervisor during his time there. He was not present on island when Applicant was interviewed by the NCIS. He saw Applicant about three to four days later. Applicant told him that he viewed SD2's genital area to see if she had any piercings there. He did this for hygienic purposes. Mr. C was aware that SD2 had some issues at school with which Applicant was involved. He saw the family in a social setting three to four times, but he did not notice anything unusual about their interaction. He opined that Applicant has integrity and can be trusted. (Tr1. 58-68)

**Applicant's coworker at ML-1, Ms. W.** She talked with Applicant the day after his interview with NCIS. He was upset about the interview, told her about the allegations, and denied the conduct. He also told her that SD2 had been seen by a mental health professional. She had seen Applicant's family together at one or two social functions and thought they were a normal family. She stated that Applicant is outstanding to work with and is helpful and pleasant. She believes he should retain his security clearance. (Tr1. 71-76)

## **Policies**

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.

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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 D, Sexual Behavior**

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

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 in this case. The following is potentially applicable:

(a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted.

SD2 alleged that Applicant sexually abused her between November 2016 and April 2017, when they were living on a military installation at ML-1. She gave a statement to the NCIS detailing the abuse. In November 2021, Applicant was charged in Federal District Court (superseded by an indictment in June 2022) based, in part, on these allegations. Applicant denied the allegations. His denials are not credible in light of his admissions of looking at his 18-year-old stepdaughter's vaginal area to see if she had a piercing, his admission that he queried her on her virginity, and his admission that he used corporal punishment on SD2 by spanking her with her pants and underwear pulled down. I did not find his explanation about why he engaged in these actions with SD2 rather than her mother, W2, credible. The above disqualifying condition applies to SOR ¶ 1.a. (See HE V)

I have also considered all of the mitigating conditions for sexual behavior under AG ¶ 14 and considered the following potentially relevant:

(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; and

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

Applicant's sexual contact with SD2 occurred in 2017. He denies the allegation and is awaiting trial. While he has no further contact with SD2, his past actions of sexually abusing his stepdaughter cast doubt on his reliability, trustworthiness, and judgment. There is no evidence to support that Applicant acted based upon consent. AG ¶¶ 14(b) and 14(d) do not apply.

### **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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying in this case. The following 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 person was formally charged, formally prosecuted or convicted.

Two of Applicant's former stepdaughters (SD1 and SD2) accused him of sexual misconduct and spoke to authorities about his misconduct. That information was presented to a federal grand jury, which based upon probable cause, returned an indictment in November 2021 against Applicant on the evidence presented. In June 2022,

a superseding indictment was also issued charging him with four counts of sexual misconduct against SD1 and SD2. His trial date on the charges is now set for October 2023. The above disqualifying condition applies to SOR ¶¶ 2.a-2.b. (See HE V)

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and considered the following relevant:

(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

(c) no reliable evidence to support that the individual committed the offense.

While Applicant's underlying sexual misconduct occurred from approximately 2003 to 2008 and from 2016 to April 2017, it occurred against his two stepdaughters who trusted him to protect them, not abuse them. He denied all the charges and is awaiting trial. I do not find his denials credible. Both SD1 and SD2 came forward to authorities and described Applicant's criminal sexual actions. His willingness to take advantage of his stepchildren, who trusted him, casts doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 32(a) and 32(c) do not apply.

#### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the personal conduct security concern:

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.

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

(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.

Applicant deliberately provided false or misleading information on his 2011 SCA (GE 3) and his 2013 SCA (GE 2) concerning his prior disciplinary history and the reason for his leaving the agency where he worked from June 2009 to August 2011. He is a highly educated person, who has served as a security manager in a number of positions, has filled out numerous SCAs himself, and assisted others in doing so. Additionally, he

completed the 2011 SCA within one month of his resignation from the agency, so it would be fresh in his mind. With this background, he was fully aware of his responsibilities to provide truthful, non-misleading information when answering questions about his previous work experiences. The MSPB settlement agreement between the agency and Applicant had no bearing on his responsibility to provide accurate information on his SCAs. AG ¶ 16(a) applies to SOR-A1 ¶¶ 3.a-3.g.

Applicant provided deliberately false and misleading information on his 2019 SCA (GE 1) concerning the circumstances for him leaving his employment duties because of his debarment in May 2017. He stated on his SCA that the reason for leaving ML-1 was “Two year detail overseas completed.” This was at best a misleading entry and at worst a false statement. He was forced to leave his position and his family on ML-1 because of violating a PO in favor of W2 and SD2, which resulted in his debarment from the installation and required his exit from the island. He was originally scheduled to remain at ML-1 until October 2018. He is a highly educated person, who has served as a security manager in a number of positions, has filled out numerous SCAs himself, and assisted others in doing so. With this background, he was fully aware of his responsibilities to provide truthful, non-misleading information when answering questions about his leaving ML-1. AG ¶ 16(a) applies to SOR-A2 ¶ 3.h. As for SOR-A2 ¶ 3.i, I find in favor of Applicant because even though Applicant’s departure from ML-1 followed allegations of his misconduct, his departure from the island was a unilateral act by the command, not a mutual agreement by the command and Applicant.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
  
- (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.

Intentionally providing false information on not one, but three different SCAs, does not equate with committing minor offenses and doing so certainly casts doubt on Applicant’s trustworthiness, reliability, and good judgment. The record contains no evidence that he attempted to correct the false and misleading information through the years. His actions are even more egregious because he is a security manager with years of knowledge and experience in this area. Neither AG ¶¶ 17(a) and 17(b) apply.

### **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 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines D, J and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's military service, including his deployments and his VA disability, his civilian service, and the testimony of his witnesses. However, I also considered his serious sexual misconduct with two stepchildren and his position as a security manager. The evidence causes me to question his reliability, trustworthiness, and judgment.

Overall, the record evidence leaves me with question and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the Guideline D, J, or E 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 J:	AGAINST APPLICANT
Subparagraphs: 2.a-2.b:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT

Subparagraphs: 3.a-3.h:

Against Applicant

Subparagraph: 3.i:

For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge