



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



In the matter of:)
)
) ISCR Case No. 22-02472
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

05/16/2024

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline D, Sexual Behavior, Guideline J, Criminal Conduct, Guideline M, Use of Information Technology, and Guideline F, Financial Considerations. Eligibility for access to classified information is denied.

Statement of the Case

On February 13, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines D, J, M and F. The DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR (Answer) on March 13, 2023, provided supporting documentation, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 20, 2023, the Government amended the SOR to include an additional allegation under Guideline D and Applicant submitted a timely response. The case was assigned to me on November 9, 2023. On January 24, 2024. DOHA issued a notice scheduling the hearing for February 21, 2024.

I convened the hearing as scheduled. Department Counsel offered into evidence Government Exhibits (GX) 1-18 which were admitted without objection. Applicant testified but did not provide any exhibits. I held the record open through March 8, 2024, to allow both parties the opportunity to submit additional documentary evidence. Neither party submitted additional evidence. DOHA received the hearing transcript (Tr.) on February 28, 2024. The record closed on March 8, 2024.

Findings of Fact

In his Answer to the SOR and Amended SOR, Applicant admitted SOR ¶¶ 1.b-1.d and 4.a-f. He denied SOR ¶¶ 1.a, 2.a and 3.a. His admissions are incorporated into my findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 42 years old. He is married and has two children, ages 12 and 17. He has been with his current employer since September 2022 as a trainer and currently holds a security clearance. (GX 1; Tr. 10-11, 20-22, 117)

In September 2000, after about a year of college, Applicant joined the Navy when he was 19 years old. In about April 2001, while in course studies with the Navy, Applicant was charged with sexual assault. Applicant stated that, on the night in question, he and several sailors rented a hotel for a night off base where they consumed alcohol. One of these sailors was a woman he had been casually dating but they had not previously had sexual relations. She later told investigators that she and Applicant were intoxicated that night and participated in consensual kissing. He then attempted to have her touch him. She pushed him away and told him she wanted to go to sleep. She later woke up naked and felt that she had been penetrated. She reported the event and the Naval Criminal Investigative Service (NCIS) initiated an investigation. (GX 13-15; Tr. 24-25, 53-61)

Applicant submitted a voluntarily sworn statement to NCIS in which he claimed that neither the woman nor he was intoxicated at the time and that they were both awake during their consensual sexual relations. However, when further questioned by investigators, he stated that he underestimated the amount of alcohol that they had consumed and provided contradictory statements on the extent that she was awake or asleep during sex. Applicant was charged with sexual assault (SOR ¶ 1.d). The charges were dismissed in June 2001, following an Article 32, Uniform Code of Military Justice (UCMJ) hearing. He testified that he felt "terrible" that the event occurred and that he never should have put himself in that situation. (GX 13-15; Tr. 24-25, 53-65)

After the dismissal of charges, Applicant completed his course studies and began his first tour on a ship. In the years that followed, he served on multiple ships and deployed during Iraqi Freedom and Enduring Freedom. In 2010, Applicant was promoted to E-6. (GX 1; Tr. 25-20, 50-53)

In August 2011, Applicant's wife gave birth to their second child and went on maternity leave. Shortly afterwards, Applicant began to have health issues and was later diagnosed with cancer. In order to assist with his treatment and recovery, his wife did not return to work. After treatment, he was placed on limited duty and there was discussion of processing him for medical retirement. However, he successfully stayed in the Navy. In 2013, he returned to active duty, but did not immediately return to a ship. This reduced his income because of the loss of sea pay and family separation allowance. (GX 1; Tr. 29-34)

Unable to maintain his finances, Applicant filed for Chapter 7 bankruptcy in April 2015. He estimated that about \$20,000 of debt, primarily relating to credit cards, was included in the bankruptcy which was discharged in August 2015. (SOR ¶ 4.f) Applicant testified, that following the bankruptcy, he was able to get his finances back into good standing. (Answer; GX 16-18; Tr. 29-36)

By 2016, Applicant was again serving on a ship as an E-6. At the time, he was 35 years old. One night in May 2016, he and several sailors enjoyed an evening out where they consumed alcohol. While out, he met a female sailor who was an E-4 and in her early 20s. They walked back to the ship together. She knew that he had mentored other sailors on board and felt comfortable talking with him. (Answer; GX 6-7; Tr. 72-85)

Once on board, he took her to an isolated section of the ship. She later reported to NCIS investigators that he started to kiss her and she initially "went along with it." He then proceeded to place his hand inside the backside of her jeans and then slid his hand around to her front near her pubic area. At that point, she stated that she "realized what was happening" and pulled his arm out of her pants, pushed him away and exited the room. (GX 6)

Applicant was subsequently charged with violation of UCMJ Article 120(d) – Abusive Sexual Contact. In his Answer, Applicant admitted "to engaging in a consensual intimate kissing incident that my accuser initiated and escalated," and that "I maintain my innocence addressing this allegation." (SOR ¶ 1.b) (Answer; GX 6-7, GX 12; Tr. 72-85)

While that matter was under review, in September 2016, Applicant intentionally viewed pornographic images on his government computer. He was aware that this was against regulations. Although he did not go directly to pornographic websites, he described using a search engine to preview the explicit images. His activity was discovered and he was charged with violation of UCMJ Article 92 – Failure to Obey Order or Regulation. (SOR ¶ 1.c) (Answer; GX 7-8, GX 12; Tr. 84-89)

In about March 2017, Applicant received nonjudicial punishment for both offenses. His punishment included restriction, extra duty, forfeiture of pay, and a reduction in rank (which was suspended for six months). He appealed but the punishment was sustained on review. (GX 6-8; GX 12; 81-86)

Applicant testified that by 2017, he was experiencing a lack of intimacy with his wife and began looking at pornography with increasing frequency. He also began downloading pictures and imagery onto his cellphone through peer-to-peer networks which provided no preview of the file until downloaded and opened. He testified that he came across his first image of child pornography “by accident” through one of these downloads. (Tr. 92) At first, he deleted the images. However, over time, he submitted search terms that he knew would lead to the download of child pornography. (Tr. 90-96)

In May 2020, NCIS and State A agents conducted a search of Applicant’s residence. Several images of suspected child pornography were found on his cell phone, and he admitted to possessing child pornography. He was charged with violations of 18 U.S. Code ¶ 2252 – Production, Distribution, and Possession of Child Pornography and UCMJ Article 134 – Possessing, Receiving or Viewing Child Pornography. (Answer; GX 2-5; Tr. 38-44, 89, 107)

At a General Court-Martial in September 2021, Applicant was convicted under UCMJ Article 134 and received a sentence of 12 months confinement, reduction in rank to E-4 and a bad conduct discharge which included the loss of his military benefits. (Answer; GX 4; Tr. 100-107)

While in confinement, Applicant participated in counseling and detailed the benefits of those sessions. He was released in July 2022 and required to register with State B, his current state of residence, as a sex offender. With that registration, he is restricted from living near parks and schools, lost his right to vote and is prohibited from owning a firearm. He must also report any email address he uses to State B. He believes he is required to stay registered as a sex offender through 2029. He stated that his family, friends and employer are aware of the circumstances surrounding his confinement and discharge. (GX 5; Tr. 38-47, 103-107)

Applicant continued to participate in counseling after his release with his family’s therapist through mid-2023 when he no longer found it to be beneficial. He did not provide any records of those counseling sessions. While in confinement, Applicant’s wife prepared documents for a divorce, but did not complete the filing. He said that they have reconciled, but he continues to live apart from his wife and children. (Answer; Tr. 42-50, 89-105)

Applicant’s conviction, confinement and bad conduct discharge caused significant financial stress for him and his family. Although he was able to quickly secure his current employment after his release, he testified that he was still working to resolve several

delinquent accounts. He admitted all of the debts alleged in the SOR. (Answer, Tr. 11-15, 39-40, 115-120)

SOR ¶ 4.a (\$753) is a consumer account that was charged off in about March 2022. Applicant testified that this account was settled and his April 2023 credit report lists the account as a paid charge off. (GX 16-17; Tr. 108)

SOR ¶ 4.b (\$1,546) is a consumer account that was also charged off in about March 2022. Applicant stated that he believed he had resolved this account, but did not provide supporting documentation. His April 2023 credit report continued to list the account as charged off. (GX 16-17; Tr. 108-110)

SOR ¶ 4.c (\$12,944) is the balance remaining following the voluntarily repossession of Applicant's vehicle in 2021. Applicant stated that he was attempting to work with a collection agency to resolve the debt and had been making monthly payments. He did not provide documentation of correspondence with the collection agency or a history of his payments. His April 2023 credit report lists the debt as charged off. (GX 16-17; Tr. 110-112)

SOR ¶ 4.d (\$6,658) is a personal loan that was charged off in about February 2022. Applicant submitted a March 2023 payment agreement with a collection agency reflecting that he was to begin making monthly payments of \$150 toward the debt. He testified that he issued those payments for several months, but that there was a break in payments following an unknown termination of his automatic payments. However, he claimed to have reinitiated payments at \$71 per month. He did not provide proof of any payments toward this account. (Answer; GX 16-17; Tr. 112-113)

SOR ¶ 4.e (\$215) is a consumer account that was listed as past due in Applicant's March 2022 credit report. Applicant recalled speaking with the creditor about this account and learning that it had a \$0 balance. His April 2023 credit report lists the account in good standing. (GX 16-17; Tr. 114-115)

Applicant expressed remorse over his past actions and claimed he hit "rock bottom" while in confinement. (Tr. 132) Since his release, he has not had any negative interactions with law enforcement or disciplinary issues with his employer. He stated he is working on being a better husband and father. He is also committed to his work and living within his means to address his financial circumstances. He currently earns about \$110,000 annually and his wife has returned to employment and earns about \$32,000 annually. Although separated from his wife, he continues to contribute to the family expenses. (Answer; Tr. 21-22, 39-41, 101-119, 132-135)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, "the clearly consistent standard

indicates that security determinations should err, if they must, on the side of denials.” 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 D, Sexual Behavior

The security concern relating to this guideline is set out in AG ¶ 12:

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

- (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.

In 2001, Applicant was charged with committing sexual assault on an intoxicated female sailor. Although he provided inconsistent statements to investigators at the time, those charges were eventually dismissed. In 2017, he received nonjudicial punishment for abusive sexual contact upon a female sailor of a lower rank onboard ship and for viewing pornography on his government computer.

Beginning in 2017 through his arrest in 2020, Applicant also viewed child pornography on his cell phone. Under Guideline D, the security concern over sexual behavior "includes conduct occurring in person or via audio, visual, electronic, or written transmission." I find that Applicant's downloading and accessing sexually explicit images of children satisfies this definition. I find that Applicant's conduct in all of these instances reflects a serious lack of judgment and that disqualifying conditions AG ¶¶ 13(a), 13(c), and 13(d) apply.

AG ¶ 14 describes potentially applicable mitigating conditions for sexual conduct, including:

- (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.

Over the course of his Navy career, Applicant was twice charged with sexual assault and received nonjudicial punishment on one occasion. Although he expressed remorse over his actions, he still contests that he did anything wrong and believes that both charges arose from consensual sexual actions that he and his partner took at the time. However, he has not established that those interactions were strictly private, consensual and discreet. AG ¶ 14 (d) does not apply.

Additionally, Applicant viewed pornography on a government computer in 2016. Most significantly, he downloaded and viewed child pornography from sometime in 2017 until about May 2020. It cannot be said that his actions were infrequent or occurred long ago. Additionally, he remains registered with State B as a sex offender, indicating that State B authorities do not trust him to be out in society without restrictions. AG ¶ 14(b) does not apply.

Applicant testified that he attended counseling sessions while in confinement and continued with a family counselor after his release. He described the benefits of those sessions, but did not provide any treatment records. It is unclear from the record whether he has demonstrated ongoing compliance with a treatment plan or received a favorable prognosis from a qualified mental health provider. AG ¶ 14 (e) does not apply.

Applicant's actions put him in a position where he might have been subject to coercion, exploitation, or duress. As he notes, however, his family, friends and employer are aware of the circumstances leading up to his arrest and confinement. His registration with State B as a sex offender is also a matter of public record. Therefore, AG ¶ 14(c) has some application. However, insufficient time has passed to establish that Applicant's behavior is solely in his past. The Guideline D security concerns are not mitigated.

Guideline J, Criminal Conduct

The security concern relating to this guideline 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 adjudicative guideline notes several conditions that could raise security concerns under AG ¶ 31. The following are potentially applicable in this case:

(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; and

(e) discharge or dismissal from the Armed Forces for reasons less than "Honorable."

In March 2017, Applicant received nonjudicial punishment for UCMJ Article 120(d) Abusive Sexual Contact and UCMJ Article 92 – Failure to Obey Order or Regulation. At a General Court-Martial in September 2021, he was convicted under UCMJ Article 134 – Possessing, Receiving or Viewing Child Pornography. As a result of his criminal activity, he received a bad conduct discharge from the Navy. Disqualifying conditions AG ¶¶ 31(b), and 31(e) apply.

AG ¶ 32 describes potentially applicable mitigating conditions for criminal conduct, including:

(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.

Over the course of his Navy career, Applicant was twice charged with sexual assault and received nonjudicial punishment on one occasion. As recently as May 2020, he was in possession of child pornography. While in confinement and afterwards, he has expressed remorse over his past actions, attended counseling and stated his focus on regaining the trust of those around him. There is some recent evidence of rehabilitation.

However, Applicant has shown over time, and most recently with his possession of child pornography, a pattern of extremely poor judgment. Insufficient time has passed to establish that the rehabilitation has been successful and that Applicant's past actions no longer raise questions as to his reliability, trustworthiness or judgment. Neither AG ¶¶ 32(a) nor 32(d) applies.

Guideline M, Use of Information Technology

The security concern relating to this guideline is set out in AG ¶ 39:

Failure to comply with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology includes any computer-based, mobile, or wireless device used to create, store, access, process, manipulate, protect, or move information. This includes any component, whether integrated into a larger system or not, such as hardware, software, or firmware, used to enable or facilitate these operations.

The adjudicative guideline notes several conditions that could raise security concerns under AG ¶ 40. The following are potentially applicable in this case:

- (e) unauthorized use of any information technology system; and
- (f) introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system when prohibited by rules, procedures, guidelines, or regulations or when otherwise not authorized.

In 2016, Applicant used his government computer to access and view pornography. From 2017 through his arrest in May 2020, he used his cell phone network to perform a criminal act by downloading child pornography. Disqualifying conditions AG ¶¶ 40(e) and 40(f) apply.

AG ¶ 41 describes potentially applicable mitigating conditions for the misuse of information technology including:

- (a) so much time has elapsed since the 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.

Applicant's viewing of pornography on his government computer occurred during a limited period eight years ago. His actions were discovered, he admitted his error and did not further attempt to view pornography on a government or work computer. However, rather than establish that this was an unusual circumstance or singular error in judgment, he proceeded to download and view child pornography over his cell phone network over the next three years until his arrest in May 2020. Similar to the reasons discussed under Guideline D and Guideline J, insufficient time has passed to conclude that Applicant's behavior no longer casts doubt on his reliability, trustworthiness or judgment. AG ¶¶ 41(a) does not apply.

Guideline F, Financial Considerations

The security concern relating to this guideline is set out 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The financial security concern is broader than the possibility that an individual might knowingly compromise classified information 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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)

The adjudicative 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.

In 2015, after several years of financial difficulties, Applicant filed for Chapter 7 bankruptcy. Recently, he has again experienced financial difficulties largely related to his confinement and loss of military benefits following his bad conduct discharge. Recent credit reports show accounts in delinquent status. Disqualifying conditions AG ¶¶ 19(a) and 19(c) apply.

AG ¶ 20 describes potentially applicable mitigating conditions for the financial security concerns including:

- (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;
- (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; and

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

In 2011, Applicant's wife left her employment to give birth to their second child. Shortly afterwards, Applicant was diagnosed with cancer which severely impacted his family's financial circumstances leading to his filing for bankruptcy in 2015. These were circumstances largely beyond Applicant's control and, for a period following the bankruptcy, he was able to maintain his finances in good standing. AG ¶ 20(b) is applicable to SOR ¶ 4.f.

Recently though, Applicant is again maintaining several delinquent accounts. Unlike the previously unforeseen events, his current financial difficulties are the direct result of his criminal activity, confinement and loss of military benefits following his bad conduct discharge. Neither AG ¶¶ 20(a) nor 20(b) is applicable to the remaining debts alleged in the SOR.

Applicant further testified that he was communicating with creditors and paying on several of his delinquent debts. However, the record only reflects that he has paid or otherwise resolved the debts associated with SOR ¶¶ 4.a and 4.e. AG ¶ 20(d) is applicable to SOR ¶¶ 4.a and 4.e. SOR ¶¶ 4.b, 4.c and 4.d remain unresolved.

Since returning to employment in September 2022, Applicant has resolved some debts and not experienced any new delinquent debts. However, he has not yet established a sufficient track record of payments to mitigate the ongoing 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 D, J, M and F in my whole-person analysis.

Over the course of his military career, Applicant served on multiple ships and deployments and stated his desire to continue to serve his country. However, he has also made several choices reflective of extremely poor judgment. During his hearing, Applicant admitted to hitting “rock bottom” while in confinement. He appeared remorseful over his past actions and stated his desire to rebuild his family and career. Still, he was twice charged with sexual assault including one charge that resulted in nonjudicial punishment. Even more distressing, he downloaded and viewed child pornography for a period of about three years and as recently as May 2020, which resulted in his trial and conviction by General Court-Martial.

The frequency, recency, and severity of Applicant’s actions leave me with questions and doubts as to his suitability for a security clearance. I conclude that Applicant did not 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
Subparagraphs 1.a-1.d:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline M:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT
Subparagraph 4.a:	For Applicant
Subparagraphs 4.b-4.d:	Against Applicant
Subparagraphs 4.e-4.f:	For Applicant

Conclusion

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

Bryan J. Olmos
Administrative Judge