



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



In the matter of:)
)
) ISCR Case No. 19-03523
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel
For Applicant: *Pro se*

07/20/2022

Remand Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding sexual behavior, personal conduct, and criminal conduct. Eligibility for a security clearance is granted.

Statement of the Case

On April 19, 2019 Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On February 28, 2020, 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 D (Sexual Behavior), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct), and detailed reasons why the DCSA CAF 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.

In a notarized statement, dated April 3, 2020, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on October 29, 2020. Because of health concerns associated with the COVID-19 pandemic and pandemic protocols, the case was not assigned to me until October 25, 2021. A Notice of Hearing was issued on January 24, 2022. I convened the hearing as scheduled on February 10, 2022.

During the hearing, Government exhibits (GE) 1 through GE 3, and Applicant exhibits (AE) A through AE E were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on February 18, 2022. I kept the record open to enable Applicant to supplement it with documentation that was identified during the hearing. He took advantage of that opportunity and timely submitted two documents which were marked and admitted as AE F and AE G without objection. The record closed on March 10, 2022.

On March 22, 2022, after having considered all of the evidence, I issued a decision in the case that it was clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Accordingly, his access to classified information was granted. Department Counsel subsequently appealed that decision.

On June 12, 2022, the Defense Office of Hearings and Appeals (DOHA) Appeal Board issued a decision, remanding the case for the following reason:

An examination of the record reveals that it may not be complete. In his brief, Department Counsel noted the Judge requested at the hearing that Applicant provide a complete copy of the records of the treatment he received from a psychologist. Appeal Brief at 6, quoting from Tr. at 45. Department Counsel also argued that "Applicant produced none of the additional material. Instead, he provided [a record from his primary care physician] showing ongoing treatment for depression." *Id.* In his reply brief, Applicant argues that statement is false, claiming he submitted in a timely manner 30 additional "documents" from the psychologist, including "every record he held [,] as well as records from his primary care physician. Reply Brief at 2. In the decision, the Judge noted he received two post-hearing documents from Applicant that were marked as Applicant's Exhibits F (a three-page final report from the primary care physician) and G (a one-page Order of Termination of Probation from a county court).

Based on the foregoing, we conclude the best resolution is to remand this case for the Judge to determine whether the record is complete. On remand, the Judge is required to issue a new decision. Directive ¶ E3.1.35.

At the time the record closed on March 10, 2022, I had not received any documentation other than those materials that had been marked as AE A through AE G. No additional documents were forwarded to me by Department Counsel. Upon being notified that additional documents had apparently been submitted, I performed a computer search, but that effort failed to locate them. It is possible that they were sent to my old, and no-longer working, email address. An email was received from Applicant, dated July 7, 2022, which contained Chart Notes, Diagnosis and Treatment Plan; Progress Notes; and SOAP Notes (Subjective, Objective, Assessment, and Plan). In the absence of objection from Department Counsel, I have marked those documents and admitted them as AE H.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with comments, all of the factual allegations in the SOR (SOR ¶¶ 1.a. and 1.b., 2.a., and 3.a.). His admissions and comments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is a 34-year-old employee of a defense contractor. He has been serving as a software development lead with his current employer since October 2021. He previously served as a software developer (April 2019 – October 2021); software development lead (October 2018 – April 2019) and application developer (February 2011 – July 2018). He did not indicate when he graduated from high school, but he did receive a bachelor's degree in 2010, and earned additional college credits towards a master's degree, but has not completed the requirements for such a degree. He has never served with the U.S. military. He has never held a security clearance. He was married in 2020. He has one child, born in 2021.

Sexual Behavior, Personal Conduct, and Criminal Conduct

In his SF 86, in response to inquiries regarding his police record, Applicant reported an incident that occurred in July 2018:

I regrettably exposed my genitalia to someone that could visible see me through a window. The following morning there was a news story about the incident. I immediately called the police department and let them know I was the person of interest in the news story. I gave them all my information and met with a detective. I didn't hear anything from them until the end of the year (November 2018). I received a notice for an appearance for the incident. We are still in the process of negotiating a plea with the district attorney. I believe we are close to negotiating a withhold of adjudication as the witnesses are not interested in pursuing anything against me. As a result of my actions, I lost my position [with my employer]. I lost many friends. I lost the trust of my family. It was a disgraceful act that does not show my true character. By my own choice I have been seeing a therapist biweekly since the incident happened (July of 2018). I've seen my father cry two times, once when my grandmother passed and once the day of this news

story. I am confident this issue will not happen ever again. I am very aware that this has the possibility to disqualify me from receiving clearance but I still want to be 100% transparent with everyone. There is no possibility of blackmail related to this because a lot of people I know already have heard this story. I have accepted my past and am trying to better myself with a bright future.

(GE 1 at 40)

On May 15, 2019, Applicant was interviewed by an investigator with the U.S. Office of Personnel Management (OPM). During that interview, he expanded on the incident:

In [July 2018] [he] went by himself . . . to the [university]. [He] walked around on campus and then purposefully exposed his genitals to persons inside of a food/cafeteria establishment through a window ([he] was standing outside flashing the people on the inside). [He] does not remember who he was flashing other than it appeared to be women inside of the building. [He] exposed himself as he enjoyed doing the act. [He] ran away from the area after he was noticed by people inside the establishment and left the campus. . . .

(GE 2 at 7

As a result of Applicant's self-report to the police, in November 2018, a summons was issued charging him with exposure of sexual organ. Throughout the remaining portion of 2018 and up through mid-2019, the matter continued until June 5, 2019. On that date, upon his plea of No Contest, the court suspended imposition of sentence and placed him on probation for the term of six months; ordered him to stay away from the location of the offense; ordered him to have no contact with the victim; and directed him to continue counseling. (GE 3; AE D) He successfully completed his probation and it was terminated on December 4, 2019. (AE G)

In addition to the July 2018 incident, Applicant also reported to the OPM investigator that three prior similar incidents took place 2015, 2016, and 2017. He was not caught by law enforcement after any of those other incidents. (GE 2 at 8) Upon reconsideration, during the hearing, he stated that there were four or five such incidents. (Tr. at 26) Although he never targeted certain individuals, he flashed primarily young women. He never followed them; he never attempted to touch them; he never had physical contact with them; and he never attempted to commit any sex acts with them. (Tr. at 26-27) His motive for his actions was merely his own sexual gratification. (Tr. at 27) The initial incident occurred during a period when Applicant was encountering a "communication barrier" with his girlfriend before they actually married. She was unaware of any of the incidents until he told her following the 2018 incident. (Tr. at 34)

During the period of his earlier incidents, he considered seeking professional help, but because of the stigma associated with seeking such help, he did not take any such actions. (Tr. at 25) Applicant started addressing his issues regarding his conduct following

the July 2018 incident. He voluntarily engaged the professional services of a licensed psychologist that same month, and they initially met for a total of 25 sessions commencing on July 23, 2018, and continuing at least until August 7, 2019, with their most recent session taking place in February 2022. They initially met weekly, then once each month, and then every other month. (Tr. at 30; AE H) At one point, because of the pandemic, no in-person sessions were held, but they finally did so in February 2022, when he was prescribed antidepressants. (Tr. at 31-33)

Another aspect of Applicant's condition was revealed during therapy. When Applicant was in the 7th grade, he was molested by an 11th grade high school student who was with a group of friends. The older boy essentially directed him to "show his privates", and although he did not want to do it, he did so. He never told anyone about the incident, but the incident stayed with him for a substantial time. He finally told someone – his psychologist – about it. (Tr. at 35; Answer to the SOR at 1)

Based on the information reviewed during therapy, the psychologist's opinion was:

[Applicant] was previously diagnosed and treated for Major Depressive Disorder and Exhibitionist Disorder. Over the course of treatment, we investigated the source(s) for the symptoms in question and worked to eliminate the problematic behaviors, especially the exhibitionistic behaviors. It is my opinion that the Exhibitionist Disorder is in full remission at this time, as he "has not acted on the urges with a nonconsenting person, and there has been no distress or impairment in social, occupational or other areas of functioning" (DSM-5) since 2018. However, he did report occasional mild depressive and anxiety issues, and, accordingly, we have agreed to recurring psychotherapy services for the foreseeable future to assist with ongoing mental health issues.

(AE E)

As noted above, the psychologist indicated that the Exhibitionist Disorder - 302.4 (F65.2) was considered to be in full remission. The "in full remission" specifier does not address the continued presence or absence of exhibitionism per se, which may still be present after behaviors and distress have remitted. *Diagnostic and Statistical Manual of Disorders, 5th Edition – Text Revision* (DSM-V at 689) Exhibitionist Disorder (exposing the genitals) is considered one of the Paraphilic Disorders under the DSM-V. (DSM-V at 685) Exhibitionist Disorder was selected for specific listing and assignment of explicit diagnostic criteria in the DSM for two main reasons: it is relatively common, in relation to other paraphilic disorders, and it may entail actions for the individual's satisfaction that are noxious or potentially harmful to others, and classified as criminal offenses. Because of the nature of Applicant's alleged activities, they are considered anomalous activity preferences which resemble distorted components of human courtship. They are not considered anomalous target preferences. The term paraphilia denotes any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners. However, in some circumstances, the criteria "intense and persistent" may be difficult to

apply. In such instances, the term paraphilia may be defined as any sexual interest greater than or equal to normophilic sexual interests. (DSM-V at 685-686, 689-691)

Although the psychologist reported that he had also diagnosed Applicant with Major Depressive Disorder, according to his letter of February 7, 2022 (AE E), his actual Chart Notes, Diagnosis and Treatment Plan; Progress Notes; and SOAP Notes reflect the diagnosis to be Adjustment Disorder with Mixed Anxiety and Depressed Mood – 309.28 (F43.23), a combination of depression and anxiety is predominant. It is unclear which of the two diagnoses are present for [i]f an individual has symptoms that meet criteria for a major depressive disorder in response to a stressor, the diagnosis of an adjustment disorder is not applicable.” (DSM-V at 288)

From December 2018 until about June 2019, Applicant’s physician prescribed Escitalopram (commonly called Lexapro) to treat his major depressive disorder, single episode, unspecified. (AE F) Regardless of the actual disorder, over the early course of his treatment, certain stressors continued to be present: losing his job; losing many friends; increased criticism and scrutiny from his family; and legal issues. Financial strain and legal issue-related stress were subsequently added. Eventually, Applicant’s mood, anxiety, and impulses were reduced, and good improvement was noted in October 2018 (AE H) The situation improved somewhat, flattened at times, and again improved, depending on the legal issues or the employment issues confronting him. There was a significant improvement in August 2019, when the legal issues were resolved; he became engaged to his long-time girlfriend; and his mood and anxiety improved. (AE H)

While Applicant has not exposed himself since the July 2018 incident – now four years ago – he did acknowledge that he has had thoughts about doing so, but he has successfully blocked those thoughts and urges. (Tr. at 35-36, 46, 50) His participation with a psychologist to treat his depression was encouraged by his family physician. (AE F)

Work Performance and Character References

Applicant’s current Site Lead considers Applicant to be a master-level software developer and data architect as well as a team lead and mentor for the software developers. He exceeds expectations in all capacities. He sets high standards for himself and his software team and works tirelessly to deliver useful products. The way he coaches and develops junior developers sets him apart from many software subject matter experts. Colleagues check in with him daily to ask questions, verify an approach, or seek help troubleshooting. Ever patient and helpful, he never fails to support teammates. Colleagues respond enthusiastically to his style of leadership. He has always been personable and professional. His impressive expertise and leadership have delivered critical solutions to date, and with a clearance, he would be able to add additional value through increased analysis and interaction. (AE C)

The Chief, Knowledge Management Division, relies heavily on Applicant’s skills and judgment to ensure they do right for their leaders and staff. With a clearance, he

envisioning Applicant taking on greater leadership roles as his software subject matter expert. (AE B)

A work colleague and teammate reports that Applicant is highly respected by all who know him – both teammates and customers alike. Everyone seeks out his guidance and trusts his judgment for professional and personal matters equally. (AE A)

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 standard that must be met is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that granting the person access to classified information is clearly consistent with the interests of national security.

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines in SEAD 4. 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.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, the administrative judge applies these guidelines 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. The concept recognizes that we should view a person by the totality of his or her acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather

than actual, risk of compromise of sensitive information. Furthermore, security clearance determinations should err, if they must, on the side of denials. (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)). 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

At the outset, I note I had ample opportunity to evaluate the demeanor of Applicant, observe his manner and deportment, appraise the way in which he responded to questions, assess his candor or evasiveness, read his statements, and listen to his testimony. It is my impression that his explanations regarding his psychological conditions issues are consistent and have the solid resonance of truth.

Upon consideration of all the facts in evidence, including those in the DOD CAF case file, those submitted by Applicant, and his testimony, as well as an assessment of Applicant's demeanor and credibility, and after application of all appropriate legal precepts and factors, I conclude the following with respect to the allegations set forth in the SOR:

Guideline D, Sexual Behavior

The security concern relating to the guideline for Sexual Behavior 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.

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

- (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. Applicant's Exhibitionistic Disorder (exposing his genitals) in public on several occasions between 2015 and 2018 constituted a pattern of compulsive and high-risk behavior of a criminal nature that reflected a lack of discretion and opened him up to criminal prosecution. Only one of those incidents – the one that occurred in July 2018 – led to his prosecution, essentially because it was reported publically and he turned himself into the authorities.

The guideline also includes examples of conditions under AG ¶ 14 that could mitigate security concerns arising from his Sexual Behavior:

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

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

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

AG ¶¶ 14(b), 14(c), and 14(e) have been established. The significance of his childhood incident, the memory of which stayed with him for so long, was not fully explained. Applicant's sexual behavior took place between 2015 and 2018, generally once each year, but there have been no repeated incidents since the one in July 2018. Although he flashed primarily young women, he never followed them; he never attempted to touch them; he never had physical contact with them; and he never attempted to commit any sex acts with them. His motive for his actions was merely his own sexual gratification. Things changed after that most recent incident. He self-reported to the police, his employer, and his family. He sought professional help.

Because of his self-reporting, the behavior no longer serves as a basis for coercion, exploitation, or duress. Because he sought professional help, he underwent treatment for the Exhibitionistic Disorder. The psychologist – a qualified mental health professional – indicated that the Exhibitionist Disorder was considered to be in full remission. While Applicant recently restarted seeing his psychologist, the focus of the continuing treatment is his Major Depressive Disorder, an issue that is apparently of little security concern to the Government because it was not alleged in the SOR. Moreover, that disorder seems to be controlled by prescribed medication.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline also includes an example of a condition that could raise security concerns under AG ¶ 16:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

AG ¶ 16(c) has been established. My discussion related to Applicant's sexual behavior is adopted herein. Following the July 2018 incident, Applicant informed his employer of what had transpired. He was fired.

The guideline also includes examples of conditions under AG ¶ 17 that could mitigate security concerns arising from personal conduct. They include:

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(c), 17(d), and 17(e) apply. By its very nature, the SOR allegation has limited Applicant's alleged personal conduct to the fact that he was fired by his employer because of the July 2018 incident. No other issues of personal conduct are alleged. That incident and the actual termination both occurred in July 2018 – over three and one-half years ago. Applicant not only acknowledged the behavior, he self-reported it, to the police, his family, and to his employer. He took immediate steps to address his behavior and engaged the professional services of a licensed psychologist. After a significant number of treatment sessions, that psychologist's professional opinion was that the Exhibitionistic Disorder – the actual basis for the sexual behavior and the firing – is in full remission. Thus, the stressors, circumstances, or factors that contributed to Applicant's untrustworthy, unreliable, or other inappropriate behavior, have been alleviated.

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 one condition under AG ¶ 31 that could raise security concerns:

(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. My discussions related to Sexual Behavior and Personal Conduct are adopted herein. In July 2018, Applicant went to the university where he walked around on campus and purposefully exposed his genitals to persons inside of a food/cafeteria establishment through a window. He was standing outside flashing the people on the inside. He ran away from the area after he was noticed by people inside the establishment and left the campus. He self-reported the incident to the police. In November 2018, a summons was issued charging him with exposure of sexual organ. Upon his plea of No Contest, in November 2018, the court suspended imposition

of sentence and placed him on probation for the term of six months; ordered him to stay away from the location of the offense; ordered him to have no contact with the victim; and directed him to continue counseling. He successfully completed his probation and it was terminated on December 4, 2019. That was the sole allegation against him under Guideline J.

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.

AG ¶¶ 32(a) and 32(d) apply. Appellant's sole alleged criminal conduct incident, when he exposed his genitals on the university campus, occurred in July 2018, over three and one-half years ago. There is substantial evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, compliance with the terms of his court order and probation, and an otherwise outstanding employment record. Applicant not only acknowledged the behavior, he self-reported it, to the police, his family, and to his employer. He took immediate steps to address his behavior and engaged the professional services of a licensed psychologist. After a significant number of treatment sessions, that psychologist's professional opinion was that the Exhibitionistic Disorder – the actual basis for the sexual behavior and criminal conduct – is in full remission. Thus, the stressors, circumstances, or factors that contributed to Applicant's untrustworthy, unreliable, or other inappropriate behavior, have been alleviated, and his criminal conduct no longer casts doubt on his current reliability, trustworthiness, and good judgment.

The existence of a psychological condition does not preclude the granting of a security clearance. Some conditions are unrelated to security issues and others can be mitigated by ongoing treatment or other factors.

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 appellant'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))

There is some evidence against mitigating Applicant's conduct. In July 2018, Applicant went to the university where he walked around on campus and purposefully exposed his genitals to persons inside of a food/cafeteria establishment through a window. He was standing outside flashing the people on the inside. He ran away from the area after he was noticed by people inside the establishment and left the campus. He self-reported the incident to the police. He was fired by his employer. In November 2018, a summons was issued charging him with exposure of sexual organ. Upon his plea of No Contest, in November 2018, the court suspended imposition of sentence and placed him on probation for the term of six months.

The mitigating evidence under the whole-person concept is simply more substantial. Applicant is a 34-year-old employee of a defense contractor. He has been serving as a software development lead with his current employer since October 2021. He previously served as a software developer; software development lead; and application developer. He received a bachelor's degree in 2010, and earned additional college credits towards a master's degree, but has not completed the requirements for such a degree. Applicant not only acknowledged the July 2018 behavior, he self-reported it to the police, his family, and to his employer. He took immediate steps to address his behavior and engaged the professional services of a licensed psychologist. After a significant number of treatment sessions, that psychologist's professional opinion was that the Exhibitionistic Disorder – the actual basis for the sexual behavior, criminal conduct, and the firing – is in full remission. His supervisors and colleagues think very highly of him. He successfully completed his probation and it was terminated on December 4, 2019.

Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his sexual behavior, personal conduct, and criminal conduct. Although he was afflicted with Exhibitionist Disorder, he sought treatment from a licensed psychologist and after numerous therapy sessions, his

disorder was diagnosed as being in remission. See SEAD 4, App. A, ¶¶ 2(d)(1) through 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 D: | FOR APPLICANT |
| Subparagraphs 1.a. and 1.b.: | For Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraph 2.a.: | For Applicant |
| Paragraph 3, Guideline J: | FOR APPLICANT |
| Subparagraph 3.a.: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge