DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-05127
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: Sheldon I. Cohen, Esq.

02/18/2016

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Decision

_____

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the handling protected information and use of information technology systems security concerns, but he did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 31, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct), K (handling protected information), and M (use of information technology systems). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on November 15, 2014, and requested a hearing before an administrative judge. Department Counsel amended the SOR on April

7, 2015, by adding an additional allegation (SOR ¶ 3.b) under Guideline E. Applicant responded to the amendment on April 8, 2015.

The case was assigned to me on May 12, 2015. After coordinating with the parties, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 18, 2015, scheduling the hearing for July 28, 2015. The hearing was convened as scheduled on July 28 and July 29, 2015. The hearing was continued at Applicant's request, and reconvened on September 29 and September 30, 2015. DOHA received the hearing transcripts (Tr.) of the July sessions on August 6, 2015, and the September sessions on October 8, 2015.

Procedural and Evidentiary Rulings

Evidence

Government Exhibits (Ex.) 1, 2, 3, 7, 9, and 11 were admitted in evidence without objection. Ex. 4, 5, 6, 8, and 10 were admitted over Applicant's objection.[1] Applicant testified, called witnesses, and submitted Applicant's Exhibits A through G, I through NN, and PP through TTT, which were admitted without objection.[2] Applicant submitted a document after the close of the record. It was marked Ex. UUU and admitted over Department Counsel's objection. Administrative documents have been marked as Hearing Exhibits (HE).

Applicant objected to some of the evidence about SOR ¶ 3.b based upon a limited interpretation of the allegation. I informed Applicant that I would not limit the allegation to his interpretation. Applicant stated that he was not put on notice, and he was not prepared to address the allegation beyond his limited interpretation. I granted a continuance to permit Applicant to adequately address the allegation.[3]

Motions

Applicant's motion to direct Department Counsel to obtain and provide to Applicant files from investigative agencies was denied.[4]

Applicant moved to dismiss SOR ¶¶ 1.a, 1.b, 1.c, 1.d, and 2.a on the basis of *res judicata* or collateral estoppel, or alternatively to find those allegations in Applicant's favor as a matter of law. The motion was denied.[5]

[1] Tr. at 42-61, 594-595, 793, 811-816, 822, 840-841.

[2] Tr. at 42-61, 341, 591-595, 841-842. Ex. H and OO were withdrawn and not offered. Department Counsel offered the document that was marked Ex. OO. It was remarked as Ex. 9 and admitted without objection.

[3] Tr. at 44-57, 334-335.

[4] Tr. at 15-19; HE II, III.

[5] Tr. at 225-230; HE IV, V, VI.

Department Counsel moved to amend SOR ¶ 1.c by changing the year in the allegation from "2009" to "2010." The motion was granted without objection.[6]

Summary of SOR Allegations

Under Guideline K, the SOR alleges Applicant improperly handled or failed to safeguard classified information in four circumstances. Guideline M is merely a cross-allegation of the first three circumstances under Guideline K. Under Guideline E, the SOR alleges Applicant failed to comply with a pre-approval process for a speech he gave when he was an active-duty military officer, and that he repeatedly acted contrary to post-government employment advice provided by his service's Office of General Counsel (OGC).

Findings of Fact

On October 1, 2010, Applicant retired from the U.S. military as a senior officer after more than 30 years of illustrious and honorable service. Applicant's branch of the military will be referred to as US1. He served in leadership roles in peace and in combat. His contributions to the national defense cannot be overstated. He initiated some doctrines that were groundbreaking. His character evidence included witnesses and letters from individuals at the highest levels of the U.S. Government, military, intelligence community, and private sector.[7] It was the most impressive character-evidence case I have seen.

Applicant's last assignment in the military, from 2006 to 2010, was as the head of a section of his service that had an alphanumerical designation that will be referred to as X. Both the section and the head of the section (Applicant) were called X.[8] The section had thousands of people, and Applicant was ultimately responsible for more than 50 concepts and programs.[9]

One of the programs, which will be referred to as AB1, involved military equipment mounted on a platform. During or before 2009, X developed a concept in which the military equipment, or a variant of the equipment, would be mounted on a different platform. This became known as AB2. X personnel became aware of the specific platform during a 2009 briefing by a defense contracting company (Company A).[10] The concept was also of interest to a DOD agency (Agency A) and to a part of

[6] Tr. at 14-15.

[7] Tr. at 342-440, 461-514, 724-727, 650; GE 1; Ex. A, W-CC, EE-II.

[8] I will only use X to refer to the section, not to Applicant, except in those quotations or documents that are unclear whether the reference is to Applicant or the section.

[9] Tr. at 441, 650-652; Ex. 1, 2 at 4; Ex. DDD at 4, EEE-GGG, PPP.

[10] Company A was later acquired by another company and renamed. Most of the documentation refers to the company as renamed. For this decision Company A refers to the initial company and the company as renamed.

another branch of the military (US2-SectionA). Applicant brought the AB2 concept to the attention of the service chief of the US1.[11] The service chief wrote:

> [Applicant] recommended to me that I consider supporting the [AB] initiative, and consider a partnership with the [Agency A] on a [different] platform. He also recommended that I consider supporting the transition of [AB] capability into [a US1] program of record following an operational demonstration. I certainly did not rubber-stamp any of his recommendations as some have suggested. In fact, I was rather skeptical of the initiative, and exchanged several communications with [Applicant] to better understand what it entailed, and what was required to demonstrate the concept before I made any formal decisions to support it. Ultimately, the [US1] made the decision to take over the demonstration from the [US2]. There was no [US1] contract for [AB2] until 2011. After a period of testing and review, [AB2] was eventually terminated for lack of contractor performance.[12]

In November 2009, X personnel began working AB2 through Agency A to obtain program funding and management. X personnel estimated AB2 could be delivered 12 months after receipt of funding with a 12-month operational demonstration.[13]

In March 2010, Company A submitted an unsolicited proposal to X for a research and development project, essentially to test the viability of AB2. In April 2010, a research section of the US1 (US1R) identified AB2's completion timeline as "Aggressive and Likely Unachievable." Company A was not awarded the contract by the US1.[14]

In May 2010, Company A responded to a broad agency announcement by US2-SectionA and submitted a proposal that was materially identical to the proposal submitted to X. In May 2010, the Deputy Secretary of Defense approved AB2, but required that AB2 transition to a service or agency or be terminated within two years of funding approval.[15]

In August 2010, US2-SectionA awarded the AB2 contract to Company A. The contract was a "cost-plus, fixed fee research and development contract, funded by a combination of [US1] and [Agency A] funds." Applicant went on terminal leave about eight or nine days before the contract was awarded to Company A. He had a discussion with the managing director of Company A about working for Company A about 26 days

[11] Tr. at 656-663, 682-683, 689; Ex. 2 at 4; Ex. HHH at 1, 4; LLL; RRR at 1.

[12] Ex. LLL.

[13] Ex. HHH at 1, 4, 32.

[14] Ex. HHH at 8, 32.

[15] Ex. HHH at 4, 8, 32.

after the contract was awarded. Applicant retired from the US1 effective October 1, 2010.[16]

AB2 contracts were later the subject of a DOD Inspector General (DODIG) report, which found the following:

> [US1] personnel did not properly manage the award of contracts for the urgently needed [AB2] system. Specifically, [X] personnel improperly offloaded the award of the first [AB2] contract in August 2010 to the [US2-SectionA], instead of using [US1] program and contracting personnel. This occurred because [X] personnel inappropriately acted in a program management capacity by disregarding [US1R] personnel's assessments that did not support the 24-month development schedule used to obtain approval and funding for [AB2].[17]

In September 2010, the Secretary of Defense assigned Rapid Acquisition Authority for AB2 to the US2. The Rapid Acquisition Authority gives "the designated official, or his designee, the authority to waive any provision of law, policy, directive or regulation that such official determines, in writing, would unnecessarily impede the rapid acquisition and deployment of the needed property."[18]

In October 2010, the Secretary of the US1 requested that AB2 transition to a US1 program office. A director in the Office of the Assistant Secretary of the US1 requested that US1R and a US1 command assess the AB2 initiative. The US1R conducted its second assessment of the AB2 and determined that completion of the AB2 would take 30 months and cost between $231 million and $296 million. The US1 command concluded that AB2 development and deployment in 12 months was not feasible, but 16 months might be possible.[19]

In November 2010, the director in the Office of the Assistant Secretary of the US1 "verbally" assigned AB2 to the US1 command that did the assessment. In December 2010, the director signed a formal letter of direction assigning AB2 to the US1 command. In January 2011, the Secretary of Defense re-designated Rapid Acquisition Authority for AB2 to the US1.[20]

[16] Tr. at 437, 670-671; Ex. 1, 2 at 5; Ex. 17; Ex. HHH at 8, 32; RRR at 1.

[17] Ex. HHH at i.

[18] Ex. HHH at 8, 33.

[19] Ex. HHH at 8, 33-34.

[20] Ex. HHH at 8, 34.

In February 2011, Applicant was hired by Company A as its chief executive officer (CEO). A few days later, he submitted a Post-Government Employment Advice Opinion Request (DD Form 2945) to the US1 OGC.[21]

In March 2011, the US1 awarded the AB2 contract to Company A.[22] In its report, the DODIG found:

> In addition, [US1 command] contracting personnel awarded the second [AB2] contract in March 2011, to develop and field [AB2] in an unachievable time frame. This occurred because the Director [in the Office of the Assistant Secretary of the US1] inappropriately directed [US1 command] personnel in November 2010 to expedite fielding of [AB2] despite [US1R] and [US1 command] assessments that determined the delivery time frame was unachievable and [AB2] was not suited for rapid fielding. As a result, the warfighter did not receive an urgently needed capability, and about $149 million was wasted on a system the contractor did not complete.[23]

During March 2011, Applicant and the US1 OGC attorney handling his request corresponded several times through e-mail.[24] In April 2011, the US1 OGC issued an ethics opinion with the following advice:

> Principally, as a former senior official, you are barred from making any communication or appearance on behalf of a third party with intent to influence any [US1] officer or employee, for one year from the date of your termination of service. (18 U.S.C. § 207(c)). For the purposes of this section, in addition to [Company A], your own business (corporation or partnership) is a third party.
>
> Further, this statute prohibits you **for life** from acting as agent or otherwise representing, formally or informally, anyone except the United States before any department, agency or office of the United States in·connection with <u>any particular matter</u> involving <u>specific parties</u> in which the United States is a party or has a direct and substantial interest and in which <u>you participated personally and substantially</u> for the government while you were a government employee. (18 U.S.C. §207(a)(1)). Please note that each of the underlined terms must apply to your situation before this restriction applies to you.

[21] Tr. at 672-676; Ex. 1, 2 at 5; Ex. RR; RRR at 1.

[22] Ex. HHH at 8, 34.

[23] Ex. HHH at i.

[24] Tr. at 673-678; Ex. 2 at 5; Ex. QQ, MMM, NNN, RRR.

> [Company A] holds a contract under [a US1] Program that was awarded during the time that you were [US1/X], called the [AB2]. My research has found that although the contract was awarded by the [US2-SectionA] and funded by DoD's [Agency A], you made the decision for [US1] to sponsor the program. That decision qualifies as personal and substantial participation in the matter, and therefore the representation ban applies for the life of the [AB2] program. This limitation does not preclude "behind-the-scenes" participation in the program on·behalf of [Company A].
>
> * * *
>
> Finally, my advice with respect to these matters is advisory only. I am providing this advice in my official capacity, on behalf of the United States, and not as your representative. Neither the information you provided to receive this advice letter, nor provision of this letter, creates an attorney-client relationship between you and the attorney rendering such advice.[25]

Applicant complied with the one-year ban, but he disagreed with the US1 OGC's advice about the lifetime ban. He consulted with Company A's counsel, who agreed with Applicant that there was no lifetime ban. Applicant also consulted with an outside counsel who is an expert on conflict-of-interest laws. The outside counsel also agreed there was no lifetime ban.[26] Applicant provided his company's counsel a draft letter to the US1 OGC requesting reconsideration, including the following:

> Specifically with respect to the [AB2] concept that eventually became a program, while I may have advocated that the [US1] "sponsor" what was at that time the [AB2] concept, I asked and made sure that no obligation of funds, contracts or financial obligation of any kind was associated with this "sponsorship," because I was well aware that I had no such authority on behalf of the [US1]. This "sponsorship" for the [AB2] concept was no different from the oversight and advocacy that I lent to the multitude of other [X] concepts and programs under the oversight of the [US1/X], and in fact I paid less attention and focus to the [AB2] concept than to many other [X] concepts and programs. A review of the hundreds of presentations that I made while in the position of the [US1/X] will find no reference to the [AB2] concept at all. [X] programs that were mentioned in my presentations that are associated with companies that the [US1 OGC] has previously issued an ethics opinion regarding my post-government employment with those companies have no restrictions associated with the "personal and substantial participation," and "specific parties" clause of 18 U.S.C. § 207.

[25] Ex. 3 at 1-2.

[26] Tr. at 666-667, 755; Ex. 9; Ex. SS-YY, PPP.

> I had no direct involvement of contract award with [Company A] in my [X] position. Until receiving the 19 Apr 11 letter from [US1 OGC] I was not aware of the date of contract signature for [AB2] with the [US2-SectionA] that was funded by DoD's [Agency A]. Neither of those organizations worked for me, or the [US1]. Furthermore, research indicates that contract was signed on 10 Aug 2010 which was after I departed the office and official duties as the [US1/X]. [Company A] did not sign a contract with the [US1] on [AB2] until March 2011 which at that point it became an official [US1] program. That event occurred well after my official retirement from the [US1].[27]

There is no evidence that the draft letter was ever sent to the US1 OGC. On May 25, 2011, Company A's counsel sent a letter to the US1 OGC requesting reconsideration on Applicant's behalf. The letter provided a legal analysis of 18 USC § 207, and included the following:

> As part of your research, you determined that [Company A] holds a contract under [a US1] program called [AB2]. The contract was awarded by the [US2-SectionA] and funded by the Department of Defense's [Agency A].
>
> Your letter states that while a government employee at the [US1] [Applicant] was the [X] . . . . Your letter also states that while he was in that position, he "made the decision for the [US1] to sponsor" the Program. Based on the facts as you state them, you had to determine that decision on behalf of the government to "sponsor" the Program constituted "personal and substantial participation" to be able to conclude that a lifetime ban from representing [Company A] in all matters involving the contract issued to [Company A] under the [AB2] program is appropriate under 18 U.S.C. § 207(a)(1).
>
> It appears that [Applicant's] organizational role in the "sponsorship" of the program has been broadly attributed to responsibilities and decision of the [US1 service chief]. [Applicant's] "sponsorship" of the Program was nothing more than the administrative task of acknowledging an idea that would allow a group within the [US1] to develop the concept so that [US1 service chief] could make the decision whether or not to sponsor the development of a concept into a Program. There was no fiscal or monetary obligation involved. [US1 service chief] had the exclusive responsibility and authority that he eventually exercised to make the decision to support [AB2] as a Program.
>
> * * *
>
> [Applicant's] high level "sponsorship'" did not involve critical and ongoing consultation regarding Program details that would constitute substantial

[27] Ex. PPP.

> participation giving rise to any ban but, even if he had participated with Program details, a ban would be narrowed in scope to the items he had substantial involvement in addressing.[28]

Company A's counsel sent two follow-up e-mails to the attorney at the US1 OGC handling the matter, and contacted the attorney by telephone. On July 21, 2011, Applicant sent a letter to the US1 OGC. Applicant asserted that he had complied with all requirements; he asked for clarification of his ban; and he requested a meeting with the US1 OGC to discuss the matter. The US1 OGC would not meet with Applicant.[29] Applicant's letter included the following matters:

> Second, regarding your 19 Apr 11 letter to me on my post-government employment restrictions, I am perplexed at your opinion that a representation ban applies to me for the life of the [AB2] program. I believe there may be some confusion over the use of the term "[AB];" "[AB 2];" when it was a concept; and when it became a program. When I was the [US1/X] it was a concept, not a program, and I had no fiduciary, or any direct involvement with a potential contract award, nor was I aware of the companies who might be involved with any such award.
>
> Third, during a courtesy call to the Commander of the [Agency A] on 6 Jun 11, in response to his mentioning his top priorities I suggested that he offer for consideration to the [DOD entity] a particular [military equipment] (that my company has no association or interest) that supported his top priority for potential use on the [AB2] platform. The [Agency A] general counsel representative present asked that I not discuss [AB2] because of my one year restriction. I complied, but was surprised as the [US1 OGC] handbook (page 8) states ". . . may not communicate back to an employee of the agency you left, for the purposes of influencing that agency, for one calendar year after you retire from your [US1] position." It goes on to say, ". . . the term 'agency' refers to employees of the [US1], not the Department of Defense, not the other military services, and not other Federal agencies." [Agency A] is not the [US1], and I never worked for [Agency A], so I don't understand the concern of the [Agency A] general counsel, whom I understand was instructed by your organization to stop any of my discussion of [AB2]. What is the issue?[30]

In July 2011, US1 personnel were alerted to "multiple technical setbacks for the [AB2] program, and identified additional technical and programmable setbacks that were projected to cause the program to exceed the original baseline for cost and schedule." A forbearance letter was sent to Company A in which the US1 contracting

[28] Ex. SS.

[29] Tr. at 683-687; Ex. TT.

[30] Ex. UU.

officer requested that Company A submit a detailed plan to recover the program from the setbacks.[31]

Applicant sent two follow-up e-mails to the attorney at the US1 OGC handling the matter requesting to meet and discuss the issue. On August 5, 2011, the US1 OGC issued another memorandum in response to Applicant's request for reconsideration, upholding their opinion about the lifetime ban.[32] The letter stated the following:

> In light of your request for reconsideration, I acquired further information about your involvement with the program from the time that bids were submitted through the time of your retirement. I found a number of emails that I believe show you were significantly involved in bringing the program to the [US1], and that this involvement occurred at a time when [Company A] (or the company that [Company A] ultimately acquired) was a named bidder. Some of the emails may show a knowledge that [Company A] was a bidder in the contract, and that you, by direct action and by order to a subordinate, took actions that appear to be significant i[n] getting funding for the program. Additionally, emails and meetings occurred between you and members of [Agency A] and [US2] during this time, which appear to have made an impact on getting the program funded.
>
> Specifically, an individual who I understand to have been an employee of [Company A], sent you an email soon after bids were submitted, which advised you of some funding issues and suggested steps to help fund [AB2], to which you directed your subordinate to "look into."[33]

On August 9, 2011, the US1 OGC responded to Applicant via e-mail with the following:

> Sir, I am in receipt of this most recent correspondence and have reviewed the information therein. There is nothing new in the document which would alter this office's opinion that you have a lifetime ban. As stated in the first letter to you and restated in the second, our opinion is advisory only. As attorneys for the [US1], we tend to be conservative in our approach for the best interests of the [US1] and its former employees and senior leaders such as yourself. However, that being said, failure to follow our advice is at your peril.
>
> We see no reason to meet with you on this matter. I have coordinated the opinion regarding the lifetime ban with the Designated Agency Ethics

[31] Ex. HHH at 35.

[32] Ex. 2 at 7; Ex. Ex. 3; Ex. VV, WW.

[33] Ex. 3.

Official, the [US1 General Counsel], and [he or she] agrees with our opinion.[34]

Applicant responded to the above e-mail on August 10, 2011, again requesting to meet and discuss the issue. He also asked the following:

> 1. . . . Could you please tell me a) what specific "particular matter" your opinion of a lifetime ban applies to, and b) who is the "specific party, or specific parties, at the time of the employee's participation" for which you opine that ban might apply?
>
> 2. My duties as the CEO of the company executing the [AB2] contract involve the conduct of standard business practices. If these exclude "the intent to influence," does the [US1 OGC] opinion restrict the conduct of these standard business practices with respect to the [AB2] contract?[35]

On August 12, 2011, the US1 OGC sent a third advice letter to Applicant answering his questions:

> **The "particular matter" referred to in my advice addresses the contract awarded to [Company A] on October 15, 2010 for [description of program] known as the program called "[AB2]."** Such contract was procured by the [US2-SectionA], funded by the [Agency A], and sponsored by [X]. [Original company] (acquired by [Company A]) responded to the [US2-SectionA] Broad Area Announcement on May 7, 2010, on which date I believe the matter became a "particular matter with specific parties." **The parties involved from that date are [Company A], which stands in place of the company it acquired, and the United States.**
>
> * * *
>
> The regulation goes on to state that a communication is made with the intent to influence when made for the purpose of seeking a government ruling, benefit, approval or other discretionary Government action; or affecting government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy. Therefore, for example, requests for meetings, sales calls, bid submissions, and negotiations contain an intent to influence. Excluded from intent to influence are making routine requests not involving a potential controversy such as a request for publicly available documents, an inquiry as to the status of a matter, making factual statements, or asking factual questions. Also, there is no intent to influence when making a communication, at the initiation of the

[34] Ex. XX.

[35] Ex. YY

> Government; concerning work performed or to be performed under a Government contract, in the ordinary course of evaluation, administration, or performance of such contract.
>
> Therefore, in response to inquiry, communications with no "intent to influence" are not restricted. However, the type of communications that don't contain such intent would be rare coming from the CEO of a government contractor.
>
> As stated in my past correspondence, my advice with respect to these matters is advisory only. I am providing this advice in my official capacity, on behalf of the United States, and not as your representative. Neither the information you provided to receive this advice letter, nor provision of this letter, creates an attorney-client relationship between you and the attorney rendering such advice.[36]

There were difficulties in the program, and on January 4, 2012, the US1 issued a partial stop-work order to Company A. On January 24, 2012, Applicant sent an e-mail to a senior military officer about the possibility of transitioning the AB2 platform to the Reserve/National Guard.[37] On March 20, 2012, the US1 contracting officer issued a cure notice that stated:

> Recent issues and events during the past 30 days of contract performance have generated serious concerns on behalf of the Government as to the ability of [Company A] to safely deliver the [AB2 platform] within the time constraints and funds currently on contract. Continued schedule delays, poor subcontractor management, persistent weight and engineering challenges, and the trend of recent test failures have raised serious questions about your capability to complete this project within the current contractual schedule which expires 30 Jun 12.[38]

The cure notice also stated the Government had no plans to provide additional funding or schedule relief.[39]

On March 29, 2012, Applicant sent to e-mail to the commander of a US1 command requesting a phone conversation about the AB2 contract. On or about March 30, 2012, Applicant spoke with an official at the US1 command requesting that the US1 rescind its cure notice for the AB2 contract and also noted that Company A's legal team

[36] Ex. 3.

[37] Tr. at 756-762; Ex. 2 at 8, Ex. 4; Ex. ZZ, HHH at 35, RRR at 3.

[38] Ex. HHH at 35.

[39] Ex. HHH at 35.

were contemplating a legal case against the U.S. Government. In April 2012, the partial stop-work order that was issued in January 2012 was extended.[40]

On May 11, 2012, Applicant sent an e-mail to an Under Secretary of Defense, who interpreted the e-mail as a request to "review and intervene on [Company A]'s behalf" regarding the AB2 program. On May 23, 2012, Applicant sent an e-mail to a senior officer of the US2 stating: "If you feel it is appropriate you may want to consider having the [US2] leadership contact the [US1] leadership and request a delay in [disassembling the platform] so the [US2] may further consider the merits of transferring and/or demonstrating this system."[41]

Applicant contacted the Under Secretary of the US1 by e-mail on May 23, 2012. He requested that the Under Secretary "consider spending this relatively small amount ($3 to $5 million to get to the next stage of development) of the $50 mil remaining to confirm its potential." He added: "On 7 May I personally spoke with [unified combatant commander] face-to-face and he stated that he was a supporter of this [platform]."[42] Applicant also wrote:

> Granting an extension of the program until the end of August to enable [the next stage of development] would provide the time and verification of [the next stage of development] to those who have expressed interest in acquiring the [platform] from the [US1]. I and my staff are more than happy to meet with you and/or your staff to expand on any specifics if you would like. I thought you might appreciate hearing this perspective of the current situation regarding this game-changing capability. The attached unclassified overview brief is provided for your review and consideration.[43]

On May 23, 2012, Applicant sent an e-mail to the Under Secretary of a third branch of the military (US3).[44] He wrote:

> If you feel it is appropriate you may consider calling the [US1] Undersecretary and request a delay in [terminating the platform] so the US3 may further consider the merits of transferring and/or demonstrating this system. I and my staff are more than happy to meet with you and/or your staff to expand on any specifics if you would like. I thought you might appreciate hearing this perspective of the current situation regarding this game-changing capability.[45]

[40] Tr. at 703; Ex. 2 at 8; Ex. 4 at 2-4; Ex. HHH at 35, RRR.

[41] GE 2 at 9, Ex. 4 at 17-21.

[42] Tr. at 763-767; Ex. 2 at 9, Ex. 4 at 10-12.

[43] Ex. 4 at 11.

[44] Tr. at 776-769; Ex. 2 at 9; Ex. 4 at 13-14.

[45] GE 2 at 9, Ex. 4 at 14.

On May 23, 2012, the US1 contracting officer sent a letter of direction to Company A because it was determined there was no chance of success within the costs and delivery schedule. The letter directed Company A to:

> . . . immediately stop all work associated with the development/delivery of the [platform], cease and/or freeze all subcontracts, and place no further orders except to the extent necessary to perform disassembly, packing, and shipping the [platform] and equipment/hardware, or that which you or the subcontractor wish to retain and continue for your own account.

Additionally, all residual efforts and remaining contract funds were re-directed to the disassembly, packing, and shipping of the equipment and hardware.[46]

On May 31, 2012, the US1 OGC sent a fourth letter to Applicant with the following advice:

> It has come to my attention that you have approached the Undersecretary of the [US 1], on behalf of [Company A], asking [him or her] to grant an extension of the [AB2] program. This is in direct contravention of the advice given to you by [US1 OGC attorney] of my office in an April 19, 2011 post-government employment advice letter and subsequent follow-up of August 5, 2011 (attached).
>
> In those letters [US1 OGC attorney] opined that the lifetime representation ban under 18 U.S.C. §207(a)(1) applies to you as it relates to the [AB2] program, due to your personal and substantial participation in the matter while you were on active duty. [He or she] also advised you that the ban on representing the [AB2] program applies to the entire United States Government.
>
> Please refrain from continuing such communications with [US1] leadership. Failure to comply will be at your own peril.[47]

Applicant contacted the service chief of the US3 by e-mail on July 5, 2012. Applicant is a friend of the service chief, and he congratulated the service chief on an article the service chief wrote. Applicant also noted that US3 could use the AB2 platform: "[US3] has completed an evaluation of the [platform] recently that you may want to review one more time before this opportunity to acquire the nearly completed [platform] [is gone]." Applicant testified that he did not believe he was violating the lifetime ban because the AB2 contract had already been cancelled.[48]

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[46] Ex. HHH at 36.

[47] Ex. 3.

[48] Tr. at 700-701, 769-770; Ex. 2 at 10; Ex. 4 at 16.

The periods of performance for the US1 AB2 contract and the US2 Section contracts both ended at the end of November 2012. US1 paid more than $100 million on the AB2 contract and the US2 Section paid more than $30 million on their contract.[49]

Applicant's case was referred to the U.S. Department of Justice (DOJ) to investigate. In July 2012, the FBI executed a search warrant of Company A. Applicant voluntarily provided his personal computer. A copy of the data was made, and the computer was returned to him. Applicant retained an attorney to represent him regarding any civil or criminal violations of 18 U.S.C. § 207(a)(1). The attorney advised Applicant to check the returned computer to see if there was any information on it that could cause a concern.[50]

Applicant checked the computer and discovered classified information on the unclassified computer. He turned the computer into the Company A security officer, who turned it into US1 security personnel. A forensic examination of the computer revealed numerous classified documents stored on the computer under the folder "Previous Assignment Work." Many of the documents date to the 1990s, and none of the documents were created more recently than 2009.[51]

One of the classified documents discovered on the computer was a slide that accompanied a PowerPoint presentation that Applicant used during an unclassified speaking engagement in 2009. The classified document was not used during the presentation. Applicant's had a public affairs officer on his staff who reviewed the presentation, but the US1 public affairs office had no record that the presentation was sent to the office for review, as was required.[52]

Applicant was provided an unclassified laptop computer when he was on active duty. Applicant and several witnesses testified that more than 30 people had access to that computer. When he retired, a US1 information technology (IT) expert transferred all the personal data from the government computer to Applicant's personal laptop computer. Company A IT personnel transferred all the data from Applicant's personal laptop computer to the computer that was surrendered to the FBI. Applicant vehemently stated that he did not intentionally place classified information on any non-classified computer, and that he was unaware there were classified documents on the computer.[53]

In August 2014, the Deputy General Counsel of the US 1 notified Applicant that the US1 proposed that Applicant and his consulting company "be debarred from federal Government contracting and from directly or indirectly receiving the benefits of federal

[49] AE HHH at 36.

[50] Tr. at 739-742; Ex. 5, 8; Ex. DD.

[51] Tr. at 103-223, 728, 739-743; Ex. 5, 8, 10, 11; Ex. DD.

[52] Tr. at 63-101; Ex. 5-8.

[53] Tr. at 234-330, 732-734, 745-746; Ex. 5; Ex. DD.

assistance programs." The bases for the proposed debarment were the 18 U.S.C. § 207(a)(1) matters and the classified information on the computer.[54] The memorandum included the following:

> [Applicant's] government e-mail history between October 8, 2009 and May 28, 2010 reveals he had personal and substantive involvement in the [AB] initiative. The following e-mail communications exemplify [Applicant's] management efforts and coordination of funding partnerships for the [AB] initiative:[55]

The e-mails in question are not in the record. Applicant provided a copy of the US1 OGC proposed debarment memorandum (AE DD), but redacted the sections about 18 U.S.C. § 207(a)(1) matters, including specific accounts of the e-mail communications discussed above, likely based on Applicant's counsel's interpretation of the SOR allegation.

Applicant replied through counsel to the proposed debarment in September 2014. The memorandum noted that the US1 OGC debarment memorandum found "that [Applicant's] 'email history between October 8, 2009 and May 28, 2010 reveals that he had personal and substantive involvement in the [AB] initiative' and lists excerpts from six specific email messages."[56] Applicant and his counsel met with the Deputy General Counsel from the US1 OGC about a week later and provided a detailed PowerPoint presentation on why debarment was not warranted.[57]

In October 2014, Applicant personally sent a letter to the Deputy General Counsel from the US1 OGC. Included in the letter was the following:

> Despite the fact that my counsel and I disagreed with [US1 OGC's] advisory guidance on the lifetime ban issue, I attempted to comply with that guidance and with [US1 OGC's] related guidance on the parameters of communications that were "*not restricted.*" I believed in good faith that the subsequent communications I made to government officials were permissible because they complied with [US1 OGC's] guidance concerning communications that are unrestricted because they are made without any "intent to influence." For example, I believed that May 23, 2012, email to [Under Secretary of the US1] lacked an "intent to influence" because my stated purpose in the communication was to provide factual updates (*i.e.,* to make "factual statements") on the development of the [AB2 platform]. I understand now that there could be differing opinions on what my communications conveyed and whether they could or should be

[54] Ex. 2 at 1-2; Ex. DD.

[55] Ex. DD.

[56] Ex. 2 at 1; Ex. I at 8.

[57] Ex. J.

> classified as having been made with an "intent to influence." I assure you, however, that my intent was to comply with [US1 OGC's] guidance in this regard, not to circumvent it.[58]

In November 2014, the Deputy General Counsel notified Applicant that he and his consulting company were debarred "from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs." The debarment was for 18 months to run from August 2014 through February 2016.[59]

In the debarment memorandum, the Deputy General Counsel concluded that there was "insufficient evidence to conclude by a preponderance of evidence that [Applicant] acted improperly in handling the classified documents," and that information was not used in the determination.[60] However, the Deputy General Counsel also concluded:

> As a threshold matter, I reject Respondent's argument that he should be treated as a "layperson" for purposes of analyzing his conduct as it related to navigating post-government employment restrictions. Respondent has argued: "For laypersons like [Applicant], who had recently left a long military career and was navigating post-Government employment restrictions for the first time, the complexities were overwhelming." The restrictions repeatedly set forth in the written communications from the OGC should not have been that difficult for Respondent to understand, particularly given Respondent's vast government experience and former senior military rank. Even if I were to accept Respondent's arguments, I am struck by his willingness to substitute his own "legal" interpretation for that of the legal experts in the OGC. The responsible course of action for a "layperson" dealing with the "complexities" of the post-government restrictions would have been to comply with the opinions and guidance provided by the OGC to avoid possible penalties and related challenges - the "peril" referenced in the OGC communications.
>
> The manner in which Respondent conducted himself is particularly egregious. Respondent was told not once, but five times by the OGC - the office with enterprise-wide responsibility within the [US1] for providing legal guidance to departing senior officials on the limitations imposed by the post-government employment statutes - that 18 U.S.C. § 207 restricted him from representing Company A on the [AB2] program back to United States Government representatives with an intent to influence. Even after Respondent informed the OGC that he would "restrict his communications" in accordance with the OGC's guidance (i.e., the "ban on representing the [AB2] program applies to the entire United States

[58] Ex. K at 2-3.

[59] Ex. 2 at 1-3.

[60] Ex. 2 at 14.

> Government"), a little over one month later he again engaged in a conversation with the [US3 service chief] in contravention of the advice given by the OGC.
>
> * * *
>
> Respondent argues at length that, notwithstanding the opinions of the OGC, he did not violate 18 U.S.C. § 207(a)(1). Respondent apparently seeks to have the [US1] Suspending and Debarring Official second guess the multiple expert opinions given by the OGC in 2011 - 2012. This I will not do. The Record reflects that the legal experts in the [US1] with cognizance over post-government employment restrictions thoroughly reviewed the relevant facts and law before providing their opinions and guidance to Respondent. Furthermore, as made clear to Respondent, the senior ethics official in the Department of the [US1], the [US1] General Counsel, concurred with the opinions provided by [his or her] office to the Respondent. Nothing in the Record suggests the conclusions reached by the OGC were unreasonable. Moreover, Respondent's argument misses the focus of this responsibility review: The focus is not on proving that Respondent violated a criminal statute, as such an effort falls to the Department of Justice; it is on assessing whether his conduct in willfully ignoring the expert opinions and advice of the OGC by engaging in repeated conversations with senior government officials with an intent to influence concerning Company A's performance under the [AB2] contract is so serious or compelling as to constitute a cause for debarment. I conclude that it is.[61] (internal citations omitted)

Applicant made several attempts to overturn the debarment, but they were all denied. He believes the debarment was incorrect, and that he had no lifetime ban. He followed his company's attorney's advice as well as the outside counsel. Applicant testified that his involvement with the AB2 when he was X was relatively small compared to the more than 50 other programs that were being considered when he was X. He believes that the particular matter ended when the contract was terminated. He felt there was no ban on discussing the platform, because the platform "was a separate issue from the particular matter that the restriction applied to," which was the military equipment that was mounted on the platform. He also believes that some of his contacts were in response to the DOD's request for information, and that there was no intent to influence.[62]

In February 2015, Applicant entered into a settlement agreement with the DOJ, which stated in part:

[61] Ex. 2 at 12-14.

[62] Tr. at 655, 700-704, 719-724, 728-729, 759-761, 771-783; Ex. 9; Ex. L-O, DDD at 4.

> B. The United States contends that from June 1, 2011 to July 2012, while he was Chief Executive Officer of [Company A], [Applicant] engaged in a prohibited conflict of interest in that he had improper communications or appearances on behalf of [Company A] before United States' officers regarding a U.S. military defense program known as [AB2], a program in which the United States contends [Applicant] participated personally and substantially while he was with the [US1]. The United States alleges that this conduct violated 18 U.S.C. § 207(a)(1). That conduct is referred to below as the Covered Conduct.
>
> C. [Applicant] denies that he engaged in any prohibited conflict of interest, denies that he violated 18 U.S.C. § 207(a)(1), and denies any liability under 18 U.S.C. § 216(b).
>
> D. This Agreement is neither an admission of liability by [Applicant] with respect to any prohibited conduct (including liability under 18 U.S.C. § 207(a)(1) and 18 U.S.C. § 216(b)) nor a concession by the United States that its claims are not well founded.[63]

Applicant paid $125,000 to the United States to settle the case, and the DOJ dropped civil and criminal actions against him. Applicant stated that he followed his attorney's advice to take the settlement because the cost of defending the matter would have exceeded the settlement amount, there was no acknowledgement of fault or guilt, and it closed the matter.[64]

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 to be 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, administrative judges apply the 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. According to AG ¶ 2(c), 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.

[63] Ex. B.

[64] Tr. at 643-645, 772-774; Ex. 2; Ex. B.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant 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.

Section 7 of EO 10865 provides that adverse 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 E, Personal Conduct

The security concern 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

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

> (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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

person may not properly safeguard protected information. This includes but is not limited to consideration of:

> (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:
>
> (2) disruptive, violent, or other inappropriate behavior in the workplace;
>
> (3) a pattern of dishonesty or rule violations;
>
> (4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

SOR ¶ 2.a alleges that when he was in the US1, Applicant failed to submit to the US1 public affairs office a proposed text of a speech for pre-presentation review and approval. Applicant's had a public affairs officer on his staff that reviewed the presentation. Even if the presentation was not forwarded to the US1 public affairs office for review, that information does not rise to the level of a personal conduct security concern. SOR ¶ 2.a is concluded for Applicant.

SOR ¶ 2.b alleges the following:

> Between about January 2012 and about July 2012, you acted repeatedly in a manner contrary to the post-government employment advice provided to you by the Office of General Counsel, by engaging in conversations and correspondence with senior Government officials in an effort to promote and preserve the [AB2] program.

Applicant's objection to some of the evidence about SOR ¶ 2.b was based upon the interpretation that the allegation was limited to "whether [Applicant] was obligated to follow the advice of the [US1] counsel in regard to the [AB2] program." I did not limit the allegation to that interpretation. Applicant is correct in that the OGC advice did not convey a duty on Applicant. If Applicant had a duty, it was imposed by 18 U.S.C. § 207:

> (a) Restrictions on All Officers and Employees of the Executive Branch and Certain Other Agencies.—
>
> (1) Permanent restrictions on representation on particular matters.—Any person who is an officer or employee (including any special Government

> employee) of the executive branch of the United States (including any independent agency of the United States), or of the District of Columbia, and who, after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia) in connection with a particular matter—
>
> (A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,
>
> (B) in which the person participated personally and substantially as such officer or employee, and
>
> (C) which involved a specific party or specific parties at the time of such participation,
>
> shall be punished as provided in section 216 of this title.

Criminal penalties imposed by 18 U.S.C. § 216 are up to one year in prison for any violation of 18 U.S.C. § 207, and up to five years in prison for a willful violation. A civil penalty of up to $50,000 is authorized for each violation.

Applicant was not bound by the advice provided by the US1 OGC, but he was bound to follow the law. Likewise, I am not bound by the various legal opinions or the debarment memorandum, but I find them helpful in arriving at my decision.

Having considered all the evidence, I conclude Applicant violated 18 U.S.C. § 207(a)(1). In so doing, I am adopting the DOJ contention in the settlement memorandum, which concisely framed the issue:

> . . . that from June 1, 2011 to July 2012, while he was Chief Executive Officer of [Company A], [Applicant] engaged in a prohibited conflict of interest in that he had improper communications or appearances on behalf of [Company A] before United States' officers regarding a U.S. military defense program known as [AB2], a program in which . . . [Applicant] participated personally and substantially while he was with the [US1].[65]

I do not accept Applicant's arguments to the contrary. I specifically find that Applicant "participated personally and substantially" in the concept that became known as the AB2 program. While not bound by the opinions, I find the facts in the advice letters and the debarment memorandums to be persuasive. The e-mails discussed in

[65] I did not consider the settlement as an admission of guilt or fault on Applicant's part. I am including it because it accurately reflects what I have concluded to be Applicant's conduct.

the advice letter and the proposed debarment memorandum are not in the record. They may have been helpful, but Applicant redacted the specific accounts of the e-mail communications discussed in the US1 OGC proposed debarment memorandum.

I further do not accept Applicant's argument that many of his communications were made without the "intent to influence." The AB2 program was faltering and ultimately cancelled. It is clear that Applicant was attempting to save the contract before its cancellation and resurrect it after its cancellation, if not though the US1, then through another service.

Applicant's conduct created a vulnerability to exploitation, manipulation, and duress. AG ¶ 16(e) is applicable. The disqualifying conditions listed for Guideline E are illustrative only, not exhaustive and exclusive. The general security concern raised by Guideline E is that "[c]onduct 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 information." *See* ISCR Case No. 12-01698 at 4 (App. Bd. Jun. 10, 2014); ISCR Case No. 07-00852 at 4 (App. Bd. May 27, 2008). Applicant's conduct showed dishonesty, poor judgment, and an unwillingness to comply with the law, which raises questions about his ability to protect classified information. AG ¶ 16(d) is raised, as is the general concern for personal conduct.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

> (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 caused 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.

Applicant has continued to deny wrongdoing. He had multiple chances to follow the US1 OGC advice and conform his conduct to the law. He was warned that "failure to comply would be at your own peril." As a result of his actions, Applicant faced the "peril" of civil and criminal sanctions from the DOJ, which ultimately were resolved through a $125,000 settlement; debarment; and the current security-clearance proceedings. Without appropriate acceptance of responsibility, I am unable to determine that similar incidents are unlikely to recur. The conduct continues to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶¶ 17(c) and 17(d) are not

applicable. AG ¶ 17(e) is partially applicable. I find that personal conduct concerns remain despite the presence of some mitigation.

Guideline K, Handling Protected Information

The security concern for handling protected information is set out in AG ¶ 33:

> Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

AG ¶ 34 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

> (b) collecting or storing classified or other protected information at home or in any other unauthorized location;
>
> (c) loading, drafting, editing, modifying, storing, transmitting, or otherwise handling classified reports, data, or other information on any unapproved equipment including but not limited to any typewriter, word processor, or computer hardware, software, drive, system, gameboard, handheld, "palm" or pocket device or other adjunct equipment; and
>
> (g) any failure to comply with rules for the protection of classified or other sensitive information.

There were numerous classified documents stored on Applicant's personal computer. The evidence raises the above disqualifying conditions.

Conditions that could mitigate handling protected information security concerns are provided under AG ¶ 35. The following is potentially applicable:

> (a) so much time has elapsed since the behavior, or it has happened 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 good judgment.

More than 30 people had access to Applicant's computer when the classified information could have been loaded onto the computer. Applicant vehemently stated that he did not intentionally place the classified information on any non-classified computer, and that he was unaware there were classified documents on the computer. There is insufficient evidence to overcome those assertions. Handling protected information security concerns are mitigated.

Guideline M, Use of Information Technology Systems

The handling protected information conduct is cross-alleged under Guideline M. Those security concerns (AG ¶ 40(d)) are mitigated under the same rationale addressed above under Guideline K.

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(a):

> (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 E, K, and M in my whole-person analysis.

Applicant's service to this country, in war and peace, cannot be overstated, and his character evidence was beyond superb. However, he chose to repeatedly violate federal law, despite repeated warnings from the US1 OGC. There are concerns about his judgment, honesty, and willingness to comply with laws, rules, and regulations.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the handling protected information and use of information technology systems security concerns, but he did not mitigate the personal conduct 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 K:	For Applicant
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline M:	For Applicant
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	Against Applicant
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	Against Applicant

Conclusion

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

_____
Edward W. Loughran
Administrative Judge