



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



In the matter of:	)	
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SSN: -----	)	ISCR Case No. 07-18063
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel  
For Applicant: *Pro se*

December 8, 2010

**Decision**

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and transcript, Applicant's request for a security clearance is denied.

On July 23, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew a security clearance required for his job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. On January 19, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise security concerns addressed in the adjudicative

<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

guidelines (AG)<sup>2</sup> for sexual behavior (Guideline D), personal conduct (Guideline E), criminal conduct (Guideline J), and use of information technology systems (Guideline M).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on June 21, 2010. Pursuant to a Notice of Hearing issued on June 24, 2010, I convened a hearing in this matter on July 14, 2010. The parties appeared as scheduled. The Government presented nine exhibits (Gx. 1 - 9) and one witness. Applicant testified on his own behalf and presented one exhibit (Ax. A). Additionally, I left the record open after the hearing to receive from Applicant a post-hearing submission. The record closed on July 26, 2010, when I received, via Department Counsel, Applicant's post-hearing submission, which is admitted without objection as Ax. B. DOHA received the transcript of hearing (Tr.) on July 28, 2010.

### **Findings of Fact**

Under Guideline E, the Government alleged that Applicant was fired from a job with a defense contractor in July 2003 for violating company policy regarding accurate submission of time cards and expense reports, and for "actions inconsistent with the best interest of the company" (SOR 1.a); that three or four times a year in the three years before about November 2004, Applicant uploaded sexually explicit materials, including photos of naked 14- or 15-year-old girls, onto his company laptop (SOR 1.b); that in about November 2004, he was fired from his job for the conduct alleged in SOR 1.b (SOR 1.c); that he had the hard drive on his company laptop erased to remove the sexually explicit materials described in SOR 1.b (SOR 1.d); that on August 25, 2004, he deliberately falsified a security clearance application (SF 86) by responding "No" to question 20 (*Your Employment Record - Has any of the following happened to you in the last 7 years? - Fired from job - Quit a job after being told you'd be fired - Left a job by mutual agreement following allegations of misconduct - Left a job by mutual misconduct following allegations of unsatisfactory performance - Left a job for other reason under unfavorable circumstances*) and not disclosing that he was fired from his job in July 2003 as alleged in SOR 1.a (SOR 1.e); and that he deliberately falsified his July 23, 2007, e-QIP, by responding "Yes" to question 22 (*Your Employment Record - Has any of the following happened to you in the last 7 years? - Fired from job - Quit a job after being told you'd be fired - Left a job by mutual agreement following allegations of misconduct - Left a job by mutual misconduct following allegations of unsatisfactory performance - Left a job for other reason under unfavorable circumstances*) and disclosing that he was fired from the job referred to in SOR 1.c, but providing a false and misleading explanation of why he was fired (SOR 1.f).

In response to SOR 1.a, Applicant admitted that he was fired for not submitting accurate expense reports; but he denied that he submitted inaccurate time cards or that he did not act in the best interests of the company. He admitted with explanation the

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<sup>2</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

allegations at SOR 1.b - 1.d. As to SOR 1.b, Applicant denied knowing if there were sexually explicit pictures of minor females on his laptop. As to SOR 1.e, Applicant admitted that he did not disclose that he was fired in 2003, but denied intentionally omitting that information. As to SOR 1.f, Applicant admitted providing a false explanation because he was embarrassed by his behavior that caused him to be fired.

Under Guideline M, the Government cross-alleged the conduct described at SOR 1.b and 1.d. (SOR 2.a) Applicant's answer to the Guideline E allegations served as his response to the Guideline M allegations.

Under Guideline D, the Government cross-alleged the conduct described at SOR 1.b and 1.c. (SOR 3.a) Applicant's answer to the Guideline E allegations served as his response to the Guideline D allegations.

Under Guideline J, the Government cross-alleged the possession of child pornography described in SOR 1.b as an allegation of criminal conduct (SOR 4.a). Applicant referred to his response to SOR 1.b as his response to SOR 4.a. Finally, the deliberate falsifications alleged at SOR 1.e and 1.f were cross-alleged as felony violations of 18 U.S.C. § 1001 (SOR 4.b). Applicant referred to his responses to SOR 1.e and 1.f as his response to SOR 4.b. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following findings of relevant fact.

Applicant is 41 years old, and works for a defense contractor as a technician performing communications and data systems installations at military installations in the United States and abroad. He has held that position since May 2005. Applicant first received a security clearance in about 1991, when he was hired by another defense contractor (Company A), where he worked as a draftsman and as an installation technician until July 2003. Thereafter, he worked for another defense contractor (Company B) doing similar work until January 2005. After leaving Company B, he was self-employed as a cable television installer and as a draftsman before being hired by his current employer. (Gx. 1)

Applicant and his wife have been married since October 1999. In addition to raising her two children (now ages 25 and 23) from a previous marriage, they have two children (ages 14 and 13) of their own. (Id.) Applicant is a high school graduate with about two years of vocational training towards an associate's degree. Available information about his performance at Company A and at his current job shows that he has a positive attitude, is a hard worker, and is highly valued for his teamwork and his expertise. (Ax. A; Ax. B)

Applicant's work at Company A required extended periods of temporary duty (TDY) travel to military installations. His living expenses were paid by his employer based on travel expense claims filed when he returned. Applicant's travel expenses were limited to a specified daily allowance<sup>3</sup> for lodgings, meals, and incidentals. That

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<sup>3</sup> Likely the same as the allowances for military and government civilian personnel travel, which is subject to the Joint Travel Regulations.

amount varies depending on geographic location of the employee's travel. For lodgings, Applicant would be reimbursed only for what he actually spent up to the specified daily allowance. The daily allowance for meals and incidentals was paid whether or not he actually spent that amount.

From September 15, 2002, until October 15, 2002, he and several co-workers were on TDY at a stateside military base for a system installation. Applicant and his co-workers stayed at a hotel geared to long-term stays. Occasionally, reservations are booked through a realty company that brokers availabilities of long-term lodgings such as the one at which Applicant stayed. However, in this instance, the hotel Applicant and his co-workers used billed each employee directly, and each employee was responsible for submitting a travel claim for reimbursement to their company. To receive reimbursement, Applicant was required to provide a copy of a paid, itemized receipt from the hotel showing the dates stayed and the rate charged, plus any taxes.

At the end of his TDY in October 2002, Applicant submitted a false claim for expenses, whereby he claimed that he paid the full allowance amount for lodgings at that location. In actuality, Applicant paid significantly less, but he intended to keep the difference. To document his claim, Applicant established what can best be described as a "strawman" real estate company and opened a business account with a bank. This allowed him to obtain a credit card machine to process transactions. He used the credit card machine to produce false receipts that purported to show he paid more than he actually did. He also produced an itemized receipt on letterhead of his company to support the credit card receipt. (Gx. 7 - 9) Applicant claimed that he was simply doing what other companies had done, but he also acknowledged that he never entered into any formal agreement with his employer to broker long-term hotel reservations for its employees. (Tr. 103 - 105) An accounting summary of Applicant's travel costs and his claim for reimbursement showed that Applicant overcharged Company A by \$1,207.26. (Gx. 6)

Company A management became aware of irregularities in Applicant's travel claims while Applicant was TDY at an overseas job site. They immediately recalled him and terminated his employment. In a meeting with his supervisor (who testified at this hearing) and a company human resources representative, Applicant insisted that he be allowed to resign, but his superiors did not give him that option. Applicant abruptly left the meeting, and still insists he quit before he was fired. The basis cited for his termination was his violation of company procedures requiring accurate submission of time cards and travel expense reports. Applicant did not file false time cards, but he did file false travel expense reports. Also cited was his failure to act in the best interests of the company. (Gx. 3; Gx. 4; Gx. 5; Tr. 30 - 52)

Applicant went to work for Company B the same month he was fired by Company A. His work at Company B was similar and required him to travel in much the same manner as he had with Company A. While on TDY with Company B, Applicant was issued a company-owned laptop computer. He was only supposed to use the laptop for official business, such as company e-mail and transmittal of weekly time cards. However, on multiple occasions, Applicant brought the laptop to a friend who loaded sexually explicit photographs and other materials onto the computer. After returning

from his trips, Applicant would bring the computer back to his friend, who erased the hard drive. In 2004, before leaving for a TDY assignment, Applicant received more sexually explicit materials from his friend in the form of a compact disk (CD). While on TDY, Applicant hurt his back and had to be hospitalized for an operation. His laptop was returned to the company in a carrying case along with the CD before Applicant could have the hard drive erased. Applicant's company discovered the CD and ultimately fired him. Applicant acknowledged that he knew he had misused company property in a way that violated company procedures and policies. (Gx. 2; Tr. 82 - 87, 105 - 110)

On July 23, 2007, Applicant submitted an e-QIP (Gx. 1) to renew his clearance. He answered "yes" to question 22. He then listed his dismissals from Company A and Company B. As to the reason for leaving Company A, he indicated that he had quit instead of being fired, and he stated that he had used his personal business credit card to pay for his lodgings while on TDY. He also implied that he had done nothing wrong and that he disagreed with Company A's interpretation of what he had done.

As to the reason for leaving Company B, Applicant stated only that after he was hospitalized for his back injury, he returned home and received a letter notifying him that he was fired. He did not mention any disciplinary action stemming from his use of a company laptop to store and view sexually explicit material. However, in a signed, sworn statement given to a Government investigator on June 17, 2008, and in response to the SOR, Applicant admitted that he deliberately falsified the reason for his dismissal from Company B because he was embarrassed about his conduct. (Gx. 2)

## **Policies**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>4</sup> for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>5</sup> and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

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<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup> Directive. 6.3.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under AG ¶ 12 (Guideline D - Sexual Behavior), AG ¶ 15 (Guideline E - Personal Conduct), AG ¶ 30 (Guideline J - Criminal Conduct), and AG ¶ 39 (Guideline M - Use of Information Technology Systems).

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>6</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>7</sup>

## **Analysis**

### **Personal Conduct**

All of the information presented, including Applicant's testimony and admissions to the SOR, raises a security concern about his personal conduct that is expressed at AG ¶ 15 as follows:

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.

As to the allegations at SOR 1.a, 1.b, 1.c, and 1.d, the Government presented sufficient reliable information, including Company A records and the testimony of Applicant's Company A supervisor, that showed he was dismissed from Company A for filing false travel expense reports. Additionally, Applicant admitted to a Government investigator, and in response to the SOR, that for two and a half years, he repeatedly misused a Company B laptop by loading onto it sexually explicit materials, which he

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<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

erased from the computer when he returned from TDY assignments; and that he was fired by Company B when it was learned that he was misusing employment; and that he tried to hide his misconduct by having the laptop hard drive erased when he returned from TDY assignments. Applicant has acknowledged knowing, at the time he was engaged in this conduct, that it was against company policy.

As discussed below, the facts established through these allegations are specifically addressed under Guidelines D (Sexual Behavior) and M (Use of Information Technology Systems), and they are sufficient to disqualify Applicant under either or both of those guidelines. Accordingly, I have not applied the Guideline E disqualifying conditions at 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 person may not properly safeguard protected information*) and AG ¶ 16(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*). Nonetheless, the facts established through SOR 1.a - 1.d invoke the general security concern stated in AG ¶ 15, above.

The Government also presented sufficient reliable information, including Applicant's admission in response to the SOR, to support the allegation at SOR 1.f. He deliberately withheld relevant and material information about why he was fired from his job with Company B, because he was embarrassed over what he had done. The facts established through this allegation require application of the disqualifying condition at AG ¶ 16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*).

However, as to the allegation at SOR 1.e, Applicant denied the gravamen of the allegation by denying any intent to falsify, thereby keeping the burden on the Government to prove the allegation. The Government alleged in SOR 1.e that Applicant falsified an SF 86 submitted in August 2004, by failing to disclose that he left Company A under adverse circumstances. The SF 86 referred to in the allegation was not submitted at hearing. Further, in response to the same question in the e-QIP Applicant

submitted in 2007, Applicant disclosed his dismissal from Company A under adverse circumstances. Accordingly, SOR 1.e is resolved for Applicant.

In response to the Government's information, Applicant did not provide any information that supports application of the mitigating conditions listed at AG ¶ 17. AG ¶ 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) does not apply, because it appears that the first time Applicant disclosed the real reason Company B fired him was during an interview with a Government investigator long after he submitted his e-QIP.

The mitigating condition at AG ¶ 17(b) (*the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully*) does not apply because Applicant did not claim or establish that anyone told him it would be appropriate to lie about why Company B fired him or to withhold information about his use of a company laptop to store sexually explicit materials. Likewise, Applicant has not presented any information that supports application of the mitigating condition at AG ¶ 17(e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*). There is no indication that his current employer is aware of his misconduct while employed at Company B.

The mitigating condition at AG ¶ 17(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*) does not apply because Applicant's willingness to lie to the Government about important information in his background is a fundamental breach of the fiduciary relationship Applicant seeks to have with the Government. As discussed under Guideline J, below, his conduct in this regard is a felony violation of federal criminal law. His willingness to break the law to conceal embarrassing behavior cannot be characterized as minor, and it must be considered recent as it is part of his current request for a clearance.

The mitigating conditions at AG ¶ 17(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 AG ¶ 17(f) (*association with persons involved in criminal activities has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations*) are inapposite to the facts and circumstances of this case. Nonetheless, Applicant has failed to mitigate the security concerns about his personal conduct that arise from the Government's information.



## Criminal Conduct

The Government alleged in SOR 4.a that the information included in the pornographic materials Applicant loaded onto his Company B computer were photographs of 14- and 15-year-old girls. Applicant admitted having pornographic materials on his company computer, but he denied that he had pictures of underage girls or that he knew such pictures were among the materials his friend loaded on the computer or were on the CD. The Government did not provide sufficient information to support this allegation of criminal conduct, and there is no information that shows law enforcement authorities even investigated Applicant for possession of child pornography. Accordingly, SOR 4.a is resolved for the Applicant.

However, as to the allegation at SOR 4.b, that Applicant violated 18 U.S.C. § 1001 by deliberately making false statements to the Government as alleged in SOR 1.e and 1.f, the record shows that he knowingly sought to hide the true reason for his dismissal from Company B when he answered e-QIP question 22. As already discussed under Guideline E, above, the record does not support SOR 1.e as written. Nonetheless, there is no question that he intended to conceal information from the Government as alleged in SOR 1.f. This information is sufficient to raise a security concern about Applicant's criminal conduct that is expressed at AG ¶ 30 as follows:

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.

More specifically, Applicant's violation of federal criminal law requires application of the disqualifying conditions at AG ¶ 31(a) (*a single serious crime or multiple lesser offenses*) and AG ¶ 31(c) (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*).

I have also considered the potential applicability of the mitigating conditions listed under AG ¶ 32; however, Applicant did not present any information that supports application of any of those factors. The mitigating condition at AG ¶ 32(a) (*so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) does not apply. Just as his falsification is considered recent under Guideline E, so, too, not enough time has passed, especially in light of his fraudulent conduct while employed by Company A, and his attempts to hide his misconduct from Company B by erasing the laptop hard drive. As to AG ¶ 32(b) (*the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life*) and AG ¶ 32(c) (*evidence that the person did not commit the offense*), as discussed under Guideline E, Applicant did not establish that he was advised to omit the truth about his Company B firing, and it cannot be controverted that he committed the offense listed. Applicant has not mitigated the security concerns raised by the Government's information about his criminal conduct.

## Sexual Behavior

The Government presented sufficient information to invoke the security concern about sexual behavior expressed at AG ¶ 12 as follows:

Sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. No adverse inference concerning the standards in the Guideline may be raised solely on the basis of the sexual orientation of the individual.

Applicant admitted using his company laptop to store and view sexually explicit materials. The record does not support that part of the SOR 3.a allegation that he possessed and viewed child pornography, which is a criminal offense in virtually every jurisdiction in the United States. Thus, there is no criminal aspect to Applicant's sexual behavior. However, Applicant demonstrated a disregard for company policies by misusing the laptop as he did. He was also embarrassed enough by his conduct to try to conceal it from the Government when he applied to renew his security clearance. Accordingly, the facts established through SOR 3.a require application of the disqualifying conditions at AG ¶ 13(c) (*sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress*) and AG ¶ 13(d) (*sexual behavior . . . which reflects lack of discretion or judgment*).

Examination of the Guideline D mitigating conditions shows that AG ¶14(a) (*the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature*) is not pertinent to the facts and circumstances of this case. AG ¶14(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 good judgment*) might apply given that the conduct occurred six years ago and there is no record of similar conduct since then. But Applicant's actions in this regard occurred over two and a half years, and served as a catalyst for further misconduct in the form of deliberate falsifications and attempts to conceal his misuse of company property for sexual purposes. His conduct directly undermines confidence in his judgment and trustworthiness. Further, AG ¶ 14 (*the behavior no longer serves as a basis for coercion, exploitation, or duress*) does not apply because Applicant did not present information that would indicate that anyone other than his wife knows about his conduct. He was embarrassed enough to try to conceal his conduct from the Government, but he has not shown that his current employer, for example, has been advised that he left Company B under adverse circumstances. Finally, AG ¶14(d) (*the sexual behavior is strictly private, consensual, and discreet*) does not apply because, when Applicant decided to use a company computer to view sexually explicit materials, his conduct was no longer private or discreet. On balance, Applicant did not mitigate the security concern about his sexual behavior.

## Use of Information Technology Systems

The Government established that Applicant's conduct also requires consideration of the security concern expressed at AG 39 as follows:

Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology Systems include all related computer hardware, software, firmware, and data used for the communication, transmission, processing, manipulation, storage, or protection of information.

As alleged in SOR 2.a, Applicant knowingly violated Company B policies when he used a company-owned laptop to store and view sexually explicit materials. Available information requires application of the disqualifying condition at AG ¶ 40(f) (*introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system without authorization, when prohibited by rules, procedures, guidelines or regulations*). He testified that he knew when he was doing it, that using the laptop as he did was against company policy.

By contrast, Applicant did not provide any information that supports application of the mitigating conditions listed under AG ¶ 41. I have not considered AG ¶ 41(a) (*so much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) for the same reasons I did not apply AG ¶ 14(b), AG ¶ 32(a), and AG ¶ 17(c). Further, there is no support for application of AG ¶ 41(b) (*the misuse was minor and done only in the interest of organizational efficiency and effectiveness, such as letting another person use one's password or computer when no other timely alternative was readily available*) and AG ¶ 41(c) (*the conduct was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification of supervisor*). Applicant's conduct was deliberate and repeated over time. Nothing about it was intended to improve organizational efficiency. Applicant has not mitigated the security concerns raised by the Government's information about his use of information technology systems.

## Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines D, E, J, and M. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 41 years old, and he has worked for his current employer for about five years. His wife testified that he is a responsible father and husband who is generous to a fault. His current employer values his expertise and his value as a team player. His current employer also cited the absence of any disciplinary problems or travel expense irregularities since he has worked there. Thus, it appears his current employer is aware

of some of the adverse information in Applicant's background. However, there was no mention of his Company B dismissal, which tends to show that his embarrassment over his conduct might hinder his candor in the future. Coupled with Applicant's willingness to violate federal law to conceal his misconduct, and his past attempts to defraud his employer, the positive information about his current circumstances is insufficient to overcome the negative inferences to be drawn from the Government's information.

A fair and commonsense assessment<sup>8</sup> of all available information bearing on Applicant's past conduct and current circumstances shows he has failed to address satisfactorily the Government's doubts about his ability or willingness to protect the Government's interests as his own. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the Government.<sup>9</sup>

### **Formal Findings**

Formal findings 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 E:	AGAINST APPLICANT
Subparagraphs 1.a - 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Paragraph 2, Guideline M:	AGAINST APPLICANT
Subparagraph 2.a :	Against Applicant
Paragraph 3, Guideline D:	AGAINST APPLICANT
Subparagraph 3.a :	Against Applicant
Paragraph 4, Guideline J:	AGAINST APPLICANT
Subparagraph 4.a :	For Applicant
Subparagraph 4.b:	Against Applicant

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<sup>8</sup> See footnote 5, *supra*.

<sup>9</sup> See footnote 7, *supra*.

## **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to continue Applicant's access to classified information. Request for security clearance is denied.

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MATTHEW E. MALONE  
Administrative Judge