



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



In the matter of:)
)
) ISCR Case No. 08-07627
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel

For Applicant: *Pro se*

March 9, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guidelines for sexual behavior, personal conduct, misuse of information technology systems, and financial considerations. Accordingly, his request for a security clearance is denied.

Applicant submitted a Questionnaire for National Security Positions, which he signed on November 17, 2006. 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 finding¹ that it is clearly consistent with the national interest to grant Applicant's request.

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

On August 6, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guidelines E (Personal Conduct), D (Sexual Behavior), M (Use of Information Technology Systems), and F (Financial Considerations) of the revised Adjudicative Guidelines (AG).²

Applicant received the SOR on August 12, 2009. He signed his notarized Answer on August 24, 2009, in which he admitted the allegations under Guideline E, except for allegation 1.a(ii) and 1.b. He denied allegation 2.a. under Guideline D. Under Guideline M, he admitted allegation 3.a. He denied all the alleged debts listed under Guideline F. Department Counsel was prepared to proceed on September 29, 2009, and the case was assigned to me on October 2, 2009. DOHA issued a Notice of Hearing on October 9, 2009, and I convened the hearing as scheduled on November 10, 2009.

During the hearing, Department Counsel offered 11 exhibits, which were admitted as Government Exhibits (GE) 1 through 11. The government also offered a demonstrative exhibit, which I marked as Hearing Exhibit (HE) I. Applicant testified and offered eight exhibits, which were admitted as Applicant Exhibits (AE) A through H.³ DOHA received the transcript (Tr.) on November 19, 2009.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated herein as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 46 years old, was an enlisted member of the U.S. Army from 1982 to 1988. He earned a bachelor's degree in electrical engineering in 1989, and a law degree in 1994. He also married in 1994, and is the father of three sons aged 7, 9, and 13 years. In 1995, in state A, he began operating a legal practice. Applicant worked for a defense contractor from 1996 to June 2006, when he was terminated. In November 2006, he moved to state B, where he obtained his current position with another defense contractor as a test and certification engineer. He has held a security clearance since 1982. (GE 1-5; Tr. 40, 161-162)

In the early 1990s, Applicant started a property rental business in state A. At one point, he owned more than 50 rental properties. He did not incorporate his business. His wife worked as the office manager. Starting in about the mid-1990s, he was

² Adjudication of this case is controlled by the revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. The revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ Applicant offered eight exhibits. However, several exhibits contained subparts. For administrative convenience, the exhibits with subparts are identified as follows: AE B, parts (pt.) 1 through 28; AE C, parts 1 and 2; AE D, parts 1 and 2; AE E, parts 1 through 20; and AE F, parts 1 through 4.

simultaneously operating the rental business, holding a full-time position with a defense contractor, and practicing law. Applicant traveled frequently for his job with the defense contractor. He and his wife had marital problems. Although they attended marital counseling in state A, they filed for divorce in 2004. Subsequently, in September 2005, his employer moved Applicant and his family to state C. After the move, they withdrew the divorce petition. In his current home state (B), he and his wife consulted a priest for counseling, but Applicant testified that, "...pretty quick he said look, I'm just a [clergyman] and, you know, you need -- you guys need to go find a real counselor." Applicant provided a document dated October 2009 showing he has participated in counseling since April 2008. He attends once or twice per week. The document does not indicate that his wife attends. He testified that his current marital relationship is "growing," (Tr. 164) but did not state his marital problems were resolved. (GE 6; AE C-pt. 1; Tr. 40, 43, 81, 92-98, 213-214, 260)

When Applicant and his wife moved in 2005 to state C, they continued to have marital problems. Applicant began to search social websites to determine if his wife was using them. In January 2006, he paid to join an adult dating website to monitor her activities. He discovered that she was accessing dating websites. He also began to access internet sites with pornographic videos, both at work and at home. He viewed pornographic material on the internet on his company computer. In January and February 2006, he downloaded hundreds of pornographic videos to his work computer. He viewed some of them while at work. He testified that he engaged in this activity because he felt angry and vengeful because of his wife's actions. Applicant's company had a security system that flagged any access to denied (prohibited) internet sites. If the employee's activities resulted in more than 100 such flags or "hits," the company installed software on the computer to monitor the employee's internet activity. In March 2006, an investigation found that Applicant's computer has "28,938 url requests and 482 A/D [access denied] hits." The company's investigator informed the Office of Personnel Management (OPM) agent that on average, Applicant accessed pornographic material for 30-45 minutes per day at work, and that Applicant stopped engaging in this activity at work after February 2006, but continued using his company computer at home to view pornography, which was against the employer's policy. (GE 7; AE B-pt. 22; Tr. 95-101, 118, 120, 130-132, 231)

Applicant testified that he did not use his work computer to download or view pornographic material between February and May 2006. However, during a business trip in May 2006, he used his company laptop to access an adult social site, and met a woman⁴ in a chat room. They left the public room and went to a private chat room. They talked, but had no visual contact. The next day, he purchased a camera and installed it, along with the camera's software, on his company laptop. That night, he again met with the woman and used the webcam. Applicant admitted in his SOR response that he

⁴ Applicant denied during the hearing that he interacted with more than one woman during his online encounters. However, his handwritten note in his interrogatory response state, "I also used my [company] laptop to login to the adult chat rooms and use Yahoo instant messenger, etc. and a webcam to have adult interaction with other women." (GE 6; Tr. 276-277).

viewed live video of adults performing sex acts, and also transmitted live video of himself, during which he exposed himself and masturbated. He testified that he did not show his face during the live video transmission because he thought he might be recognized and his actions would reflect badly on his company. He knew that accessing the adult websites and installing the software were against company rules. He also testified that, "Loading computer software on there to do what I was doing was definitely inappropriate, extremely inappropriate." Applicant testified that his actions were selfish and immature, and resulted from his state of mind about his marital relationship. (AE B-pt. 22; Tr. 101-105, 115, 126-127, 138-139, 156-160)

On May 20, 2006, Applicant's company security officer confiscated his laptop and discovered the pornographic images and movies that he had downloaded, as well as his actions in the private chat room. A June 2006 Employee Corrective Action Memo reported that between January and May 2006, Applicant viewed numerous inappropriate and/or pornographic images from the internet; downloaded hundreds of pornographic movie videos to his work computer; connected a personal web camera to his work computer; joined a chat room on an adult social website; received live video of adults performing various sex acts; and "transmitted video of yourself exposing yourself while masturbating." (GE 7; Tr. 104)

Applicant denies the implication that this activity occurred continuously from January to May 2006. He testified that it took place from mid-January to February 18, 2006, and then not again until early May 2006. He also testified that it was not a daily activity, but estimated that it occurred a few times per month. He did not deny the SOR allegation concerning his use of the webcam.⁵ In June 2006, the company found his conduct "unacceptable as an employee and a manager. Due to the extremely serious nature of your actions, the violation of company policies and procedures and the repetitious nature of your offenses, your employment with the [] company is being terminated, effective immediately." Applicant is not eligible for rehire. He reported in his security interview that he is not susceptible to coercion based on his conduct because his family and numerous people at the company are aware of his conduct. (GE 6, 7; AE B-pt. 5 and pt. 21; Tr. 105, 135-136, 238-240).

While Applicant was working for the same defense contractor in 1997, his coworkers complained that he was operating his rental property business during duty hours. Applicant denies the charge. The company investigated and coded the

⁵ Applicant wrote a response in the Corrective Action Memo noting that the company had not accurately stated information about how he used the webcam. However, he did not ask that it be changed, because he wanted to "save the investigators any further activity in what I felt was a very disagreeable task" and that he would leave it to their discretion. He noted that it was a mistake not to correct it because "It has portrayed me as being involved in activities which I was not, and has played a pivotal role in my being discharged." However, during the hearing, when Department Counsel asked about this comment, Appeal stated that what he denied was the security officer's statement that Appeal was attending counseling for his sexual activities, when his counseling was marital in nature. The memo does not discuss Applicant's counseling. However, the report of investigation could be interpreted in the way that Appeal describes, and it appears Appeal confused the Corrective Action Memo with the report of investigation. (GE 7; AE B-pt. 21; Tr. 155-157).

investigation as “violation of common sense business practices and unacceptable conduct.” The defense contractor’s report shows that the case was opened in November 1997 and closed in December 1997. It does not indicate that the charge was substantiated. The record evidence does not include a Corrective Action Memo or show that any action was taken against Applicant (GE 7; AE B, part 5; Tr. 46-48, 238).

The SOR alleges that Applicant owes more than \$500,000 in delinquent debt. The debts comprise 1 medical debt; 12 credit card accounts amounting to \$213,000, which Applicant used to cover operating expenses of his rental business (allegations 4.b. through 4.l.); and 8 foreclosed mortgages on his rental properties amounting to \$289,000 (allegations 4.m. through 4.t.). (GE 8-11; Tr. 87)

Applicant provided evidence that two debts are paid. He paid allegation 4.a., a medical debt of \$80, on October 28, 2009. He also paid a judgment obtained by the creditor in allegation 4.c. for a credit card debt in the amount of \$6,286 on October 27, 2009. Applicant also testified that he paid the credit card debt of \$14,328 alleged at 4.h., but the account number Applicant cites does not match the account number alleged at SOR subparagraph 4.h. The remaining credit card debts, which became delinquent in 2003 and 2004, are unpaid. Applicant testified that he was willing to pay his credit card obligations, and made efforts to settle, but could not reach settlement agreements with most of the creditors. He provided no documentation to substantiate his efforts to settle with the companies. In January 2006, he ended his own efforts and delegated to his attorney the responsibility for any further contacts, with instructions to let the creditors make contact if they were interested in settling the accounts. When asked about his attorney’s contacts with the creditors, he testified, “I know that he -- he responds to calls and if he sees somebody that is doing something, he offers payment, but we -- I mean we went over and over extending. I mean they know how to get a hold of us and how -- and that we want to settle. I mean you can't --.” (GE 8; AE E-pt. 2, pt. 3, and pt. 14, AE G; Tr. 85-88, 169)

Applicant testified that his credit card accounts are resolved. He relies on the state A statute of limitations, under which such unpaid debts are no longer legally enforceable after three years.⁶ He states that he was not liable after October 2007. Although he denies that he owes any of these debts, he has not contacted the credit reporting agencies to dispute the fact that the debts continue to appear on his credit bureau reports. (AE C-pt. 2, AE D, AE E-pt. 14; Tr. 192, 229)

For approximately ten years, Applicant operated his rental business without financial problems. The rental market in state A began to change in about 2001 when Applicant found that his tenants, who would not have qualified financially in the past, were able to secure home loans and pay less in mortgage payments than in rent.

⁶ Appeal cites 12 [state code] 2001 Ss 95 A(2). The statute states, in pertinent part, “A. Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards: ...2. Within three (3) years: An action upon a contract express or implied not in writing;”

Applicant began to sell his properties. He held a large auction in 2003 and sold numerous units. He held a second auction in early 2004, and sold several more properties. He contacted lenders to offer “short sales” or a deed in lieu of foreclosure, but his offers were not accepted. He was able to sell more than half of his properties, but approximately 20 properties remained unsold. He was unable to carry the mortgage payments, which totaled about \$8,000 per month. Several of the lenders who did not agree to Applicant's offers took possession of the properties. Eight of these foreclosed mortgages are listed in the SOR at paragraphs 4.m. through 4.t. (AE B-pt. 23, AE C-pt. 1; AE E-pt. 13; Tr. 61)

Applicant testified that, under controlling state A law,⁷ the lenders are not entitled to payment of the deficiency balance on these mortgage loans because they took possession of the properties. Applicant also provided ten 1099-A forms (Acquisition or Abandonment of Secured Property) forwarded by the creditors to the U.S. Internal Revenue Service (IRS). Four of the submitted 1099-A forms relate to allegations 4.m., 4.n., 4.p, and 4.q. The remaining 1099-A forms do not relate to properties listed in the SOR. (AE E-pt. 13, AE H; Tr. 203, 206)

With funds from the sale of two houses in state C, Applicant bought his current house in state B in 2007. He paid cash because he could not obtain a mortgage loan with his poor credit rating. However, he contends that he is now in good financial shape. He testified that the only loan he owes is one to his mother, who gave him \$70,000 in 2002 to help with his failing rental business. Applicant's net take-home pay of approximately \$4,000 per month, along with his wife's net income of about \$800 provides a joint net monthly income of \$4,800. He estimated at the hearing that his monthly expenses were \$2,000. Although these figures result in an approximate monthly remainder of \$2,800, Applicant stated that he does not have that much left each month. However, he did not know what additional expenses might account for the difference. (Tr. 193, 222-228)

Applicant provided performance evaluations for 2007 through 2009 that described his performance as exceeding expectations in most of the numerous categories rated. He has led projects to completion with all goals achieved. A friend who was a coworker while Applicant worked at the company where he was terminated provided a reference letter stating that Applicant was ethical, provided excellent support, and is committed to the defense of the United States. His lead engineer at the same company was unaware that Applicant engaged in activities that raised security concerns, but attested to his trustworthiness in handling classified material. His engineering manager at the same company stated that he never saw any questionable conduct and found Applicant to be professional and ethical. (AE B-pt. 27, AE C-pt. 1)

Applicant also submitted a letter from a pastoral counselor, dated October 2009, attesting that Applicant participated in counseling from April 2008 to October 2009 focusing on personal growth and healthier interactional dynamics and communication

⁷ Applicant cited 12 [state code] Sect. 2002 (2004); 12 [state code] Sect. 686; *Mare Oil v Deep Blue*, 65 P. 3d 294 (2002).

patterns. He recommends that Applicant continue with the therapy sessions. Applicant also submitted a letter from a bank loan officer stating that Applicant had obtained loans in 1999, 2000, and 2004 amounting to approximately \$583,500, and that each of the notes was paid in full as agreed, with no delinquencies. (AE C-pt. 1)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the criteria in the revised Adjudicative Guidelines (AG).⁸ The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. Instead, the Guidelines are applied along with an evaluation of the “whole person” factors listed in ¶2(a) of the Guidelines.

A security clearance decision resolves only the question of whether it is clearly consistent with the national interest⁹ for an applicant to receive access to classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”¹⁰ A decision to deny a security clearance is not a determination as to the loyalty of the applicant; it is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

The government bears the burden of producing admissible information to support its decision to deny or revoke a security clearance. The government must also prove controverted facts alleged in the SOR. If the government meets its burden, then the applicant must refute, extenuate or mitigate the government’s case. As no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion. A person granted access has a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the judgment, reliability and trustworthiness to 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.

Analysis

Guideline D, Sexual Behavior

AG ¶ 12 expresses the security concern under Guideline D:

⁸ Directive, 6.3

⁹ See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988)

¹⁰ See, Executive Order 10865, Sect. 7

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 this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 includes the following relevant conditions that raise security concerns and may be disqualifying:

(c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and

(d) sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

Applicant was vulnerable to coercion based on his sexual misconduct. When he engaged in this activity, Applicant's supervisor and coworkers were unaware of his downloading and viewing pornography from the internet. He was involved in serious misconduct that could result in termination. Other people only became aware after it was discovered through his company's security measures. Between January and May 2006, before the company detected his activities, Applicant's actions made him vulnerable to exploitation.¹¹ AG ¶13(c) applies. Disqualifying condition AG ¶13(d) also applies. Applicant downloaded hundreds of pornographic videos to his work computer, and viewed some of them during his duty hours. He engaged in graphic sexual discussions and activities with a stranger on the internet, during which he exposed himself on camera. His conduct showed a complete lack of discretion and judgment.

Under Guideline D, AG ¶14 provides the following relevant mitigating conditions:

(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;

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

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

Although Applicant's sexual misconduct in 2006 is not recent, I cannot confidently conclude that he will not resort to inappropriate conduct when subjected to stress in the future. His behavior resulted from marriage problems; Applicant testified that his marriage is "growing," but did not testify that it no longer causes stress. In

¹¹ See, ISCR Case No. 91-0259 at 5 (App. Bd. Oct. 7, 1992).

addition, Applicant knowingly and repeatedly violated his employer's policies, even though he held a security clearance, conduct that casts serious doubt on his trustworthiness, reliability, and judgment. AG ¶ 14(b) does not apply. However, AG ¶ 14(c) does apply. Applicant is no longer subject to exploitation based on this sexual misconduct, as his family, supervisor, and some coworkers are aware of his activities. As to AG ¶ 14(d), Applicant's behavior was not private, as he accessed pornography from his company computer, which was monitored by his employer. He also participated in adult social websites where he discussed sexual matters and engaged in sexual activity with strangers, behavior that is neither private nor discreet. AG ¶ 14 (d) cannot be applied. In light of the lack of mitigation under AG ¶ 14(b) and (d), the mitigation available under AG ¶ 14(c) is insufficient to find for Applicant on Guideline D.

Guideline M, Use of Information Technology Systems

AG ¶ 39 expresses the security concern pertaining to use of information technology systems:

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.

AG ¶ 40 includes the following relevant disqualifying conditions:

- (e) unauthorized use of a government or other information technology system; and
- (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.

Applicant used his employer's computer in an unauthorized manner to access pornography both at his job during duty hours and while on a company business trip. He also installed unauthorized hardware and software – the webcam and its associated software -- on his company computer to enhance his participation in prohibited sexual activity on adult websites. Both AG ¶ 40(e) and (f) apply.

AG ¶ 41 provides two relevant mitigating conditions:

- (a) so much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur

and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(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.

Mitigating condition AG ¶ 41(a) does not apply. Applicant's actions did not occur under unusual circumstances but at his work place, during the workday, and on a business trip. Even though it happened several years ago, the fact he indulged in such behavior when he was a mature adult casts serious doubt on his good judgment. AG ¶ 41(c) also cannot be applied. Applicant's conduct was intentional. It was discovered not through his own admission, but only because his company installed detection software after his excessive use of denied internet sites. Applicant's misuse of his company's information technology systems is unmitigated.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern about personal conduct:

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.

The facts support application of two disqualifying conditions under AG 16:

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

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing,...;

Applicant's viewing of adult pornography on his work computer demonstrates a willingness to disregard his company's policies. Moreover, the fact that he engaged in such activities while he held a security clearance underscores his willingness to ignore the trust that the government placed in him when he was granted a security clearance.

Applicant's untrustworthy conduct demonstrated a lack of judgment that is incompatible in those who are entrusted with classified information. AG ¶ 16(c) applies.

Applicant denies the SOR allegation that he operated his rental business from his defense contractor worksite. The company's report shows only the date the investigation was opened and closed and its code. It does not show that Applicant was admonished or suffered any disciplinary action. Therefore, the evidence does not support a conclusion that Applicant's employer found him to be misusing company time or resources for his rental business, and no mitigation is required as to the conduct alleged at subparagraph 1.b.

Concerning the possibility of coercion, disqualifying condition AG ¶ 16(e)(1) applies because, until Applicant's sexual activities were detected by his employer, they were unknown to his coworkers and supervisor. Applicant's personal and community standing would certainly have been affected by discovery of his conduct, as demonstrated by the fact that once his activities were discovered, Applicant was terminated. During the period that he engaged in these acts, and while they were unknown to his employer, Applicant was vulnerable to exploitation.

Under AG ¶ 17, the following mitigating conditions are relevant:

(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's sexual conduct is unmitigated by AG ¶ 17(c). Although his conduct was not recent, it was serious, untrustworthy, and demonstrated extremely poor judgment. AG ¶ 17(d) has limited applicability: Applicant attends therapy, but he did not testify that the marriage problems that caused negative conduct in the past no longer exist. The evidence does not show that the therapy is marital in nature, or that his wife attends. Questions remain whether marital stresses continue, and whether they might cause negative conduct in the future. As to vulnerability, AG ¶ 17(e) requires that an applicant take steps to eliminate vulnerability to coercion. Here, Applicant took no steps to inform his employer of his actions and thereby eliminate his vulnerability; His employer only learned of Applicant's compromising conduct when the security measures exposed him. AG ¶ 17(e) does not apply. Applicant's sexual misconduct is unmitigated under Guideline E.

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern about financial considerations:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The evidence supports application of disqualifying conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations). In the mid-2000s, after he sold most of his rental properties, Applicant was unable to meet the mortgage payments on the remaining units and they were foreclosed. Applicant had delinquent credit card accounts associated with his failed business. He made efforts to settle with the creditors, but could not reach settlement agreements on many of them. In January 2006, he stopped any further efforts and delegated to his attorney the responsibility for any further contacts, with instructions to let the creditors contact him if they were interested in settling the accounts.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances; and

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

It is unlikely that he will be involved in such ventures in the future because he no longer operates a real estate business, which was the source of his excessive debt. However, his debts are numerous—the SOR cites 20 debts—and total approximately

\$500,000. Moreover, Applicant's decision to end his efforts in 2006 to pay his credit card debts raises concerns that he was simply waiting for the statute of limitations to render the debts legally unenforceable the following year. His conduct casts doubt on his trustworthiness. AG ¶ 20(a) does not apply.

The circumstances that resulted in the foreclosures and the associated credit card debts were largely beyond Applicant's control. Applicant's delinquent debts arose from the unforeseeable market changes that caused him to lose renters. Applicant made substantial and reasonable efforts to resolve his mortgage delinquencies by holding real estate auctions in 2003 and 2004, and offering the lenders short sales or deeds in lieu of foreclosure. The lenders listed in the SOR recovered the properties, and under state law, cannot claim deficiency balances on these debts.

Applicant testified that he made efforts to arrange settlements with the credit card companies. However, in January 2006, he instructed his attorney to discuss settlement only if a creditor called. It appears that Applicant was simply waiting until the statute of limitations rendered the debts legally unenforceable in 2007. Under the Appeal Board's jurisprudence, this does not constitute a good-faith effort, and AG ¶ 20(d) does not apply.¹² Although Applicant receives some mitigation based on AG ¶ 20(b), it is insufficient to outweigh the disqualifying conditions under Guideline F.

Whole Person Analysis

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. Under each guideline, I considered the

¹² The Appeal Board has held that reliance on a state's statute of limitations does not necessarily represent a "good-faith effort" under AG ¶ 20(d). See, ISCR Case No. 08-01122 at 4 (App. Bd. Feb. 9, 2009); ADP Case No. 06-14616 at 3 (App. Bd. Oct. 18, 2007); ISCR Case No. 07-08049 at 5 (App. Bd. Jul 22, 2008); ADP Case No. 07-13041 at 5 (App. Bd. Sep. 19, 2008); ISCR Case No. 07-11814 at 2 (App. Bd. Dec. 29, 2008).

potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Between January and February 2006, Applicant used his employer's computer to access and download hundreds of pornographic videos while at work. He also viewed some of them during duty hours. In May 2006, he viewed pornographic material on his company laptop while on a business trip. On the same trip, he installed a camera and camera software on the laptop, and viewed live pornographic videos. He transmitted live video of himself masturbating to an adult website. Applicant did not disclose his actions, and was terminated when his employer detected these activities. Applicant's sexual misconduct occurred when he was a mature adult 42 years old, married, and the father of three sons.

Although Applicant's conduct occurred four years ago, the nature of his acts raises serious concerns. Each time he accessed a pornographic site at work, he knowingly violated company policy, and placed his own interests foremost. He also betrayed the trust the government had placed in him as a holder of a security clearance. His actions made him vulnerable to exploitation for the period when his employer was unaware of his activities.

Applicant's rental business suffered when the real estate market in state A changed. He made substantial efforts to sell his properties. The deficiency balances on his foreclosures are no longer owed under state law. However, Applicant ended his efforts to resolve more than \$200,000 in credit card debt in 2006, and waited until the statute of limitations rendered the debts unenforceable the following year. The Appeal Board has held that such reliance on a statute of limitations does not constitute a good-faith effort to resolve debt.

Overall, the record evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guidelines.

Formal Findings

Paragraph 1, Guideline E	AGAINST Applicant
Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	For Applicant
Paragraph 2, Guideline D	AGAINST Applicant
Subparagraph 2.a.	Against Applicant
Paragraph 3, Guideline M	AGAINST Applicant
Subparagraph 3.a.	Against Applicant

Paragraph 4, Guideline F

AGAINST Applicant

Subparagraph 4.a.

FOR Applicant

Subparagraph 4.b.

AGAINST Applicant

Subparagraph 4.c.

FOR Applicant

Subparagraph 4.d. – 4.l

AGAINST Applicant

Subparagraph 4.m. – 4.t.

FOR Applicant

Conclusion

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

RITA C. O'BRIEN
Administrative Judge