



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



In the matter of:)	
)	
)	ISCR Case No. 08-08724
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candance Le'i, Esq., Department Counsel
For Applicant: *Pro Se*

August 31, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant engaged in questionable conduct and judgment, and failed to comply with security rules and regulations that raise questions about his reliability, trustworthiness, and ability to protect classified information. Applicant was told by his company's security officials to cease his contact with a foreign national and to stop sending her money. He would comply for a period of time and then contact would resume and additional funds would be sent. Applicant currently sees the woman three times a week and provides her approximately \$2,700 per month in support. Applicant has failed to rebut or mitigate the government's personal conduct security concerns. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order

and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on March 24, 2009, detailing security concerns under personal conduct.

On April 20, 2009, DOHA received Applicant's answer to the SOR in which he requested a hearing. On May 27, 2009, I was assigned the case. On June 4, 2009, DOHA issued a notice of hearing scheduling the hearing which was held on June 22, 2009. The government offered Exhibits (Ex.) 1 through 7, which were admitted into evidence. Applicant testified on his own behalf.

The record was held open to allow Applicant the opportunity to submit additional information. On June 22, 2009 and June 29, 2009, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. A through Ex. F. On June 29, 2009, the transcript (Tr.) was received. On June 30, 2009, the record closed.

Findings of Fact

In Applicant's Answer to the SOR, he denied the factual allegations in SOR ¶ 1.f and ¶ 1.m. He admitted the remaining factual allegations, with explanations. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 42-year-old senior systems engineer who has worked for a defense contractor since June 2008, and is seeking to obtain a security clearance. Applicant first received a clearance in 1986. (Tr. 63, 103) In April 2009, Applicant was promoted to supervisor. (Ex. E) Applicant took on more and more work responsibility and was favorably received by his company's customers. Applicant's supervisor is very pleased with Applicant's professionalism. (Ex. F)

Applicant had an affair with a woman, which he acknowledges "in and of itself is a dishonest act, a deceitful act." (Tr. 23) Applicant fell in love with the woman and he had a difficult time breaking off his ties with her. He describes their relationship as a six-year nightmare, which would have ended if they did not have a child together. (Tr. 24) He acknowledged he violated ethical rules and moral values during the relationship, a relationship that has cost him close friends. (Tr. 24, 25)

His wife, daughters, parents, mother-in-law, and pastor are aware of the details. (Tr. 102) It was a year after the sexual affair started in 2005, before he told his wife. It was not until this year, that Applicant has been able to talk to his children about the matter. (Tr. 26)

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

In May 2003, Applicant's company sent him to Korea for temporary duty (TDY). While there, he met a Kyrgyzstani female from Kyrgyzstan who was working at a bar² outside the military base where he was TDY.

During the first three weeks of this four-week TDY in-country, Applicant spent his free time at the bar talking with the Kyrgyzstani woman. Although he was married at the time, Applicant and the woman became close. They talked about contrasting world views, politics, faith, and other topics. (Tr. 48) They had lunches and dinners together a few times. (Tr. 49) Nothing sexual occurred. A week before Applicant's TDY ended, the woman returned to Kyrgyzstan. Under her contract with the bar, she worked 11 months and was entitled to a one month vacation. The woman had a sick father, a mother, and her 2-year-old son born in 2000, living in Kyrgyzstan. When Applicant returned to the U.S., at the conclusion of his TDY, he sent the woman \$400. At the time, Applicant was simply trying to assist someone he just met. The relation was merely platonic. It was only later that he fell in love with her. (Ex. 4)

His first day back at work, Applicant informed his security office he had met the woman and sent her money. Security told him to have no further contact with the woman and not to send any additional money until security got back with him. (Tr. 51, 60, Ex. 4, page 5 of 8) Weeks passed with no additional contact from the security office. Applicant received many, many calls from the woman that he did not answer. (Tr. 51) In July 2003, he answered a call from her and resumed his contact with the woman. She was upset that he had not answered her calls and had not contacted her. (Tr. 52)

Applicant learned the woman was going to return to Korea. Applicant provided the woman sufficient funds, \$2,000 to \$3,000, to buy out her contract with the bar. (Tr. 52, 62) In January 2004, Applicant reported to security officials that between July 2003 and December 2003, Applicant sent her approximately \$10,000. She used part of the money to purchase an apartment in Kyrgyzstan for her parents and son to live in. (Tr. 62) In the fall of 2003, Applicant had a strong desire to visit the woman. In January 2004, he informed the government of the money transfers and requested permission to visit the woman. Applicant was again directed to have no further contact with the woman and to stop sending her money. His travel request was denied.

Applicant was given an appropriate amount of time to end the relationship. (Tr. 55, 65) Applicant stopped sending money, but continued making telephone calls. It was initially suggested or recommended that he change his telephone number. He was later told he could keep his cell phone number. (Tr. 71) In May 2006, he did change his number. (Tr. 73)

² At some point, his security officials gave Applicant a copy of an article from the Army Times about women working in Korean bars who would obtain or extort money from military members and contractors and provide it to the bar owners. (Tr. 60)

In February 2004, Applicant was going to fly to Kyrgyzstan to see the woman. The purpose of the trip was to visit her to determine if his feelings for her were valid. (Tr. 64) He knew his foreign travel request had been disapproved, but he still went to the airport and went through security. However, he did not get on the plane. (Tr. 69) Applicant understood if he traveled to her his career would be ended. (Tr. 53) He thought if got on the plane there was a 99.9 percent chance his career would be over. (Tr. 70)

In March 2004, Applicant underwent a psychiatric evaluation showing no psychotic disorder, but that he was going through a deeply personal and emotional situation. (Ex. 4, page 6 of 8) At that time, marriage counseling was recommended. Applicant moved on with his life. As of April 2004, all contact between the two had ended. (Tr. 55) Applicant had no contact with the woman until he accidentally met her a year later, in March 2005. (Tr. 36)

In May or June 2004, Applicant purchased a new home. After closing on the house, he discovered his wife was pregnant with their third child who was born in January 2005. (Tr. 36, Ex. 4, page 5 of 8) During this time, Applicant turned down a job offer in Denver, because he had just purchased a new home and he did not want to move or move his family. (Tr. 73) Applicant had just "gone through a year of hell over this, and I felt like my life was finally getting back on track." (Tr. 73) At this time, he was unconcerned whether the woman called or not.

Although Applicant was unaware of it, the woman had returned to Korea on a visitor's visa and started working in the same bar as before. While working there, she met someone new. In June 2004, a USAF master sergeant (E-7) made application to marry the woman and in August 2004, they married. (Tr. 56, Ex. B)

From April 2004 through March 2005, Applicant's foreign travel was restricted. He was authorized to travel to Korea on mission-related business. (Tr. 37) In March 2005, Applicant was again TDY to Korea. While there, he unexpectedly met the woman, who was again working at the same bar. Up to that point, Applicant had no idea where the woman was or what she was doing. He was surprised at seeing her, because the last he knew he had helped her end her bar employment contract and she had returned to Kyrgyzstan.

Applicant knew his running into the woman would be of concern to his employer. (Tr. 75) Applicant and the woman discussed the fact that they had moved on with their lives. The woman told him she had married an active duty enlisted member and her son was living with her in Korea. Applicant met the woman's son. The woman initially had hoped Applicant would return and marry her. (Ex. 4, page 5 of 8) They were still in love with each other, but Applicant had no intention of continuing a relationship with her. (Tr. 39)

Following his TDY, Applicant returned to the U.S. and reported seeing the woman to his security office. (Tr. 38) A restriction was placed on his travel permissions.

(Tr. 39) He was to return to Korea in August for additional temporary duty. In August 2005, the woman would not be in Korea because she was scheduled to accompany her husband to his new assignment. Late in May 2005, Applicant had a meeting with the security officials about his August trip. During that meeting, Applicant informed the security officials the woman was living with him in the U.S. and the relationship was not going to end. (Tr. 40) On June 1, 2005, his accesses were suspended pending further investigation. (Tr. 40, 66)

Applicant had discussed obtaining a waiver from the security officials. He was informed it would take at least one year to process because it involved an adulterous relationship. (Tr. 65) He was told he would have to be separated from his wife before the waiver was considered. (Tr. 65) In May 2005, he asked that the waiver be processed because he had separated from his wife and was living with the woman. (Tr. 66) Applicant submitted a group of documents, more than one inch thick, to security supporting his waiver request. (Tr. 123) Applicant was separated from his wife from May 2005 through October 2005. (Tr. 81) It was not until January 2006, that he learned the waiver would not be granted. (Tr. 68)

In May 2005, Applicant was again away from home performing temporary duty in the U.S. For seven days the woman came to CONUS because of visa issues. Her husband was being transferred from Korea to Iceland and she needed to get her Kyrgyzstani visa in order. She flew to Applicant's location and they spent the period of his TDY and several days before and after the TDY together. (Tr. 80) The woman returned to Hawaii to be with her husband while transiting to Iceland. This was the first time Applicant and the woman had sexual relations. (Tr. 85) During this time, the woman became pregnant. All were unsure if the father was the woman's husband or the Applicant.

When the woman returned to Hawaii, Applicant believed the affair was over, there would be no relationship and she would shortly be living in Iceland. He thought he would never see her again. (Tr. 121)

At the end of May 2005, the woman returned to CONUS and again lived with Applicant. The following day, Applicant reported to his security office that he was again living with the Kyrgyzstani woman. (Tr. 82) Applicant provided information that he knew was detrimental to him professionally as well as personally in his marriage and in his relationship with coworkers. (Tr. 24)

There were problems with her visa. Her husband wanted her to stay in Hawaii while the problems were fixed, she wanted to stay with friends in the U.S. (Tr. 121) Instead of staying with friends, the woman lived with Applicant until July 2005, when she received approval of her visa and left for Iceland to be with her husband. (Tr. 82) The woman got on the plane to Iceland and the affair was over. A week later, he told security she had left and the relationship was over. (Tr. 123)

The woman said she was going to Iceland to set the record straight with her husband and would be back. (Tr. 83) Applicant was uncertain if the woman would be returning, but did lease an apartment for her and her son in the local area. (Tr. 84) The record fails to indicate how long he maintained the apartment. From September 2005 through December 2005, he was working temporarily in Denver. (Tr. 83) After some time, her husband was transferred to England and then to an Air Force base on the west coast of the U.S.

In January 2006, Applicant met with security officials and disclosed what had occurred. In March 2006, Applicant's access to Sensitive Compartmented Information (SCI) was revoked. Applicant appealed the decision. (Tr. 42) In February 2007, that revocation was upheld. In March 2006, Applicant informed his wife of the affair and that his SCI access had been revoked. He also told her of the pregnancy. (Tr. 88) They started marriage counseling, which ended in November 2006. (Tr. 42, Ex. 5, page 4 of 6)

During her pregnancy, Applicant sent the woman \$300. (Tr. 43) Following the birth of the child in February 2006, Applicant began a \$750 direct deposit for child support to the woman's account. (Tr. 90, 132) Applicant had sent the woman a state Affidavit of Paternity and asked her to sign it. (Tr. 44) The woman refused to sign so long as Applicant remained with his wife and children. Having been denied paternity of his daughter, Applicant was upset with the woman and wanted to get on with his life. (Tr. 74) They both agreed their relationship was over, and for the good of the child, for both of them, and their families, it was best to terminate the relationship. (Tr. 44)

On May 3, 2006, contact stopped and there was no contact for a year. (Tr. 44, Ex. 4, page 6 of 8) Applicant did not respond to a September 2006 email from the woman. In May 2008, Applicant completed a sworn affidavit. (Ex. 5) At that time, Applicant was no longer in contact with the woman and did not know where she lived. The last he knew, she was still in Iceland.

In March 2008, Applicant's security clearance was suspended because another government agency had revoked his SCI access. (Ex. 6) In June 2008, Applicant was contacted by the woman and several weeks later she asked if he wanted to see his daughter. Applicant was unsure if the woman was separated, divorced, or living with her husband. In August 2008, they resumed communications. Applicant's wife was aware Applicant was communicating with the woman. (Tr. 45)

In September 2008, Applicant completed an affidavit of parentage listing himself as the father of the child. (Ex. 4, page 2 of 8) A name change request for the child has been submitted to the state court. (Tr. 45) Applicant is taking full responsibility and financially responsibility for his daughter. (Tr. 46) His daughter is covered by his insurance. He is actively seeking to contact the Iceland Registry Bureau so that his name properly appears on the US Report of Foreign Birth. When the documents are in order, his daughter's name will reflect his last name. (Ex. E)

Also in September 2008, he started six months of weekly counseling talking about his wife, his children, and the other woman. (T. 141) He was trying to resolve his feelings. Applicant and his wife also resumed marriage counseling and seeing a clinical psychologist. (Ex. B) In March 2009, Applicant stopped attending marital counseling when the woman moved to his location. (Tr. 46) Also in March 2009, Applicant and his wife shared with their children information about all the events occurring since May 2003. His wife and children have shared that information with their closest friends. (Ex. 3) His relationship with his children, ages 4, 15, and 20, is on the mend. (Tr. 93)

In a March 2009 letter (Ex. 3), Applicant said he was contemplating divorcing his wife. His wife has agreed that should the woman be forced to return to Kyrgyzstan, the daughter could remain with them in the U.S. (Tr. 97) Applicant sees his future with his wife. (Tr. 144) Applicant and his wife have known each other since he was 5 years old. They started dating when he was a high school freshman and they became serious as high school seniors. (Tr. 142)

In February 2009, Applicant went to the west coast to see his daughter on her third birthday. (Tr. 132) Also in February 2009, the woman completed a medical assistant course. (Ex. 3) In March 2009, the woman separated from her husband and moved to Applicant's location and has since filed for divorce. (Tr. 97) Applicant asked her not move to his location, but she came anyway. Applicant leased a home for her and her children. (Tr. 45, 91, Ex. 3) He pays \$2,050 per month rent, the utilities, telephone bill, internet bill, and for groceries. (Tr. 45, 92) All together he pays approximately \$2,700 per month for the care of the woman and her children. Applicant's wife knows he is providing this support to the woman and her family. (Tr. 92) Since March 2009, Applicant sees his daughter and the woman three or four times a week. (Tr. 143)

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense 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.

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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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

Personal Conduct

The Directive sets out various factors relevant to an applicant’s personal conduct that may be potentially disqualifying. Paragraph 15 of the Adjudicative Guidelines (AG) states a concern where there is 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:

- (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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(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;

(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; and,

(4) evidence of significant misuse of Government or other employer's time or resources.

(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, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and,

(g) association with persons involved in criminal activity.

Starting in 2003, when Applicant was 36 years old, he engaged in questionable conduct and judgment, and failed to comply with security rules and regulations which raised questions about his reliability, trustworthiness, and ability to protect classified information. In June 2003, Applicant was told by security officials to cease his contact with the woman and stop sending her money. For a time, Applicant complied, but then resumed his contact. This pattern would repeat itself over the next six years. Between July and December 2003, he sent her \$10,000 and currently provides her support of \$2,700 per month. He currently sees her three times a week. His contact with her relates primarily to their three-year-old daughter.

In February 2004, Applicant was going to fly to see the woman to validate his feelings for her. His foreign travel request had been disapproved and he was again told to cease contact with the woman. Contacted ended for a while. In June 2004, the woman married an Air Force master sergeant. In March 2005, they unexpectedly met in Korea. During May 2005 through early July 2005, they lived together in the U.S. In July 2005, she accompanied her husband on his PCS to Iceland. In January 2006, he told security what had occurred and his SCI was revoked. He acknowledged he delayed reporting facts to security. To his credit, he did eventually report the information, which he knew would be detrimental. In February 2006, Applicant started sending the woman \$750 per month following the birth of their daughter.

In May 2006, contact ended. In March 2008, Applicant's security clearance is suspended. In May 2008, contact with the woman resumes. In March 2009, Applicant contemplated divorce; the woman separated from her husband, and moved into a residence at the Applicant's location paid for by Applicant.

Applicant realizes his conduct was inappropriate. He was fully aware of the government's concerns. He stated he knew if he got on the plane in February 2004, he would have no job when he returned. He acknowledged the affair was a dishonest act, a deceitful act, and acknowledged he violated ethical rules and moral values during the relationship. He describes his relationship with the woman as a six-year nightmare, which would have ended if they did not have a child together. His judgment and reliability are questionable.

AG ¶ 17 provides conditions that could mitigate security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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.

(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;

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

(f) the information was unsubstantiated or from a source of questionable reliability; and,

(g) association with persons involved in criminal activity 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.

Much of the adverse information was supplied by Applicant. AG ¶ 17(a) does not apply because he often delayed reporting the information and then failed to follow what he was told by the security officers. AG ¶ 17(b) does not apply because there was no improper or inadequate advice leading to the conduct. Applicant has held a clearance since 1986 and knew the ramifications of his actions.

AG ¶ 17(c) does not apply because the conduct was not minor. Applicant met the woman six years ago, but continues to see her and his daughter. Since Applicant and the woman have a daughter, their contact with one another is likely to continue. The conduct casts doubt on the individual's reliability, trustworthiness, or good judgment.

Even though Applicant has received marriage counseling, AG ¶ 17(d) does not apply because the counseling has not changed the behavior. Additionally, there have been no positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior. The conduct is likely to continue. AG ¶ 17(e) only partially applies because Applicant has revealed the affair and his daughter's existence to his security officials, his wife, children, parents, pastor, and mother-in-law, which reduces or eliminates vulnerability to exploitation, manipulation, or duress.

AG ¶ 17 (f) does not apply because the information was substantiated and AG ¶ 17 (g) does not apply because Applicant was not associated with persons involved in criminal activity.

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 the 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. Applicant is 42 years old, sufficiently mature to understand the inappropriateness of his conduct. He understood the security ramifications of his actions. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his personal conduct.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. For six years, Applicant has been involved in an on-again off-again relationship with this woman. He has contemplated divorce, but is staying with his wife. However, the woman and his daughter live a short distance away.

Under Applicant's current circumstances, a clearance is not recommended. At some future time, he may well demonstrate persuasive evidence of his security worthiness.

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, Personal Conduct: AGAINST APPLICANT

Subparagraph 1.a—1.m: 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge