



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



In the matter of:)	
)	
)	ISCR Case No. 08-09975
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro Se*

March 18, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant deliberately provided false information on his security clearance questionnaire and during an interview conducted by the Office of Personnel Management concerning the circumstances under which he left a job in 2005. Applicant has failed to rebut or mitigate the government's security concerns about his personal conduct. Applicant mitigated the information technology and foreign influence 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

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)

Statement of Reasons (SOR) on July 14, 2009, detailing security concerns about misuse of information technology, and about personal conduct.

On July 30, 2009, Applicant answered the SOR, and requested a hearing. On October 13, 2009, I was assigned the case. On October 8, 2009, an amended SOR was issued detailing additional security concerns under foreign influence, which was answered on October 14, 2009. On November 6, 2009, DOHA issued a notice of hearing scheduling the hearing which was held on November 20, 2009. The government offered Exhibits (Ex.) 1 through 5, which were admitted into evidence. Applicant testified on his own behalf and submitted Ex. A through E, which were admitted into evidence. On December 1, 2009, DOHA received the transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted the SOR 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 additional findings of fact:

Applicant is a 50-year-old principal systems engineer who has worked for a defense contractor since November 2007. He is seeking to maintain a security clearance. Applicant's minister states Applicant is honest, dependable, well-educated, and committed to his work. (Ex. A) Co-workers and acquaintances state Applicant is a skilled systems engineer, competent, who displays a high degree of personal integrity, responsibility, ambition, and is a person of high morals. (Ex. B, C, D)

In July 1985, Applicant married his first wife. Four or five months after their marriage, his wife began to experience panic attacks. (Ex. 5, p. 81) The attacks became worse after they moved in 1996. She visited various psychiatrists, psychologists, and therapists and was admitted two or three times for hospital stays to address her mental condition. (Tr. 36) She was diagnosed as bipolar, but refused to take medication. (Tr. 36) She was also diagnosed as having a narcissistic aggressive personality disorder. (Tr. 37)

In 1998, Applicant was suspended for one month from work without pay for viewing adult-oriented material on the company's computer. Applicant experienced stress in his marriage and his life was in constant turmoil. He attempted to ease his stress by occasionally going to adult-oriented internet sites. (Ex. 2, p. 123) Applicant used this as an escape from pressure. (Tr. 58) Following his suspension, Applicant was required to view a sexual harassment video and sign an agreement acknowledging he would be terminated for any future inappropriate use of the internet. (Ex. 5, p. 81)

promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

From August to December 1998, Applicant went to a licensed family therapist once a month to deal with the stress in his marriage and family life. (Ex. 5, p. 81, Tr. 47) However, things got worse. Applicant would have to rush home because his wife had locked herself in the bathroom saying she was having allergic reactions to the outdoors. (Tr. 37)

From 1998 to 2003 or 2004, Applicant asserts he did not view adult material on a company computer. (Ex. 40) In 2004 and 2005, Applicant's marital stress was coupled with increased uncertainty at work. At work, departments were repeatedly restructured and jobs eliminated. (Ex. 2, p. 123) He was moved to an isolated work area with two half-time employees. After being there a month, the start time of his project was extended by 300 days. (Tr. 39) To cope with the isolation, Applicant began to surf the internet viewing adult-oriented or pornographic sites.

In October 2005, he was placed on an unpaid disciplinary leave of absence while he was investigated for viewing adult-oriented or material on a company computer. He was told the investigation would take two to three weeks. (Tr. 51) One week later, Applicant voluntarily resigned before the company had finished the investigation and before any determination as to retention had been made. (Answer to SOR) Applicant's understanding was that if he voluntarily resigned the investigation would stop and no termination determination would be made. (Tr. 31) Applicant was told the only response to future inquiries would be to list his job title, his start and end dates of employment, and he had voluntarily terminated his employment. (Tr. 31)

The last time Applicant viewed adult-oriented material on a government or work computer was in 2005. From September 2004 through November 2004, Applicant received counseling from a licensed professional counselor. (Ex. 2, p. 128, Tr. 47) The counselor referred Applicant to a psychologist specializing in men and sexual dysfunction. (Ex. 2, p. 130, Tr. 57) In 2005, his wife stopped attending counseling and pressured him to stop going. He did not return to counseling until after separating from his wife after she asked for a divorce. From October 2005 through August 2007, Applicant attended 44 counseling sessions, which focused on marriage issues and how to live with a woman who has multiple personality disorder. (Ex. 2, p. 130) In December 2007, Applicant and his wife divorced after 22 years of marriage. (Ex. 1, p.153, Tr. 36)

Having returned to counseling after separating, it took six months of therapy before Applicant could see what had been occurring in his life and marriage. (Tr. 39) His treatment involved cognitive behavioral therapy. (Tr. 52) His counselor told him that the pornography was his escape instead of turning to drugs or alcohol or seeking other women. (Tr. 38) It was Applicant's method of coping with his marriage. (Tr. 38)

Following his divorce, Applicant stated he no longer felt the need to escape to pornography. (Ex. 3, p. 120V) Applicant's psychologist indicated Applicant's prognosis was "very good," Applicant was emotionally stable, and the psychologist had no concerns about Applicant having a clearance. (Ex. 2, p. 130) In 2008, Applicant was

also seen by a doctor at a family health center, who states Applicant has no condition that would impair his judgment or reliability. (Ex. 2, p. 131)

In December 2007, Applicant completed an Electronic Questionnaire for Investigations Processing, e-QIP. Section 22 of that e-QIP asked Applicant if, during the previous seven years, he had been fired from a job, quit a job after being told he would be fired, left a job by mutual agreement following allegations of misconduct, or left a job by mutual agreement following allegations of unsatisfactory job performance. Applicant listed his August 2007, termination for non-performance. (Ex. 1, p. 160) Applicant did not list his 2005 voluntary resignation. Applicant stated the concealment was caused or significantly contributed to by inadequate advice of authorized personnel, and upon being made aware of the requirement cooperated fully. (Tr. 34)

During a February 2008 personal subject interview, Applicant related his August 2007 firing for lack of performance. (Ex. 3, p. 120Q) Applicant had asked his employer as to why he was being terminated after having received a raise and been told by his supervisors that he was doing an outstanding job. Applicant believes he was the “fall guy” for the company vice president’s poor performance. The vice president was fired two months later.

During the interview, Applicant remembers being asked if he had any problems while employed from 1984 to 2005. Since his work performance and appraisals had been excellent, he answered “no” to the question. (Tr. 59) He does not remember being specifically asked about performance problems, disciplinary problems, security violations, or computer misuse during the first interview. (Tr. 59) He failed to disclose his 1998 suspension or his 2005 voluntary resignation. The report of investigation (ROI) indicated Applicant was employed from June 1984 until October 2005. The ROI states (Ex. 3, p.120T):

He had no disciplinary problems of any kind. He left [contractor] voluntarily. One day in 10/2005, he turned his resignation letter into supervisor [name]. He did not give 2 weeks notice. He voluntarily resigned because he felt the company had restructured to the point of his isolation. He worked in many different departments due to the restructuring. Subject stated the politics at the company were ridiculous (No more specific details could be provided).The company was in survival mode and he did not want to work there anymore.

In May 2008, Applicant was again interviewed. Applicant told the investigator, he had voluntarily resigned from his job in 2005 after being informed he was under investigation for misuse of computers to access the internet to view adult content material. (Ex. 3, p. 120V) Applicant stated he answered the forms as he did because his employer had told him if he resigned, all that would be indicated was that he had resigned and no other information would be given. (Ex. 3, p.120V) He asserted he was not trying to mislead or falsify any information. (Ex. 3, p. 120V, Ex. 5, p. 82, Tr. 33)

Applicant stated he did not initially see the need to bring up what did not apply or to provide more information than what was asked by the questions on the questionnaire or by the investigator. He now sees he should have provided more information. (Ex. 3, p. 120X) He realizes his actions were based on an incorrect assumption, which he refers to as a “gross misunderstanding on [his] part.” (Tr. 33, 35) Since that time, he has continued to try to explain his thought process as to why he answered the questions as he did. (Tr. 34) Once he realized he had reached an erroneous conclusion, he volunteered all the information without being confronted. (Tr. 34, 85-86)

In December 2008, Applicant married a citizen of Indonesia. He has a mother-in-law, sister-in-law, and two brothers-in-law who are citizens and residents of Indonesia. He has never met his in-laws and maintains no relationship with them. (Ex. 3, p. 120N) They do not speak English and he does not speak Indonesian. (Tr. 43) He has said hello to his mother-in-law one time on the telephone. (Tr. 43) One brother-in-law works at an electronic game store. (Tr. 64) He does not know what the others do. His mother-in-law is elderly. His wife was last in Indonesia in 2002. (Tr. 65) In February 2009, his wife applied to become a permanent resident alien. (Answer to SOR) In September 2009, his wife became a permanent U.S. resident and must wait two years before she can apply to be a U.S. citizen. (Tr. 42, 53)

Applicant’s wife was born in 1971 in Indonesia. In 1984, her father died and, having no financial support, she lived with various relatives. In 1988, she moved to Nebraska to live with relatives. In 1991, she completed high school, having been voted the “most studious girl,” and entered college. (Ex. E, Tr. 61) In 1993, her mother requested she return to Indonesia to help her family financially, which she did. In 1994, she obtained a job at the U.S. Embassy. In 2002, she moved to California to join her first husband. In 2005, she separated from her first husband and later divorced. In 2007, she left California. Applicant and his wife met and married in December 2008. (Ex. E)

Applicant has two sons. One is 21, attending college, and is in Army ROTC. His other son is 18 and serves in the U.S. Air Force. (Tr. 44) His step-children are ages 8 and 12. Applicant’s current marriage is very positive and supportive as opposed to the adversarial relationship of his first marriage. (Tr. 67) He asserts his life is totally different as are the influences on him. (Tr. 67)

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Indonesia. The request and the attached documents were not admitted into evidence, but were included in the record as Hearing Exhibits (HEx.). The facts administratively noticed are set out below.

Indonesia is a multiparty democracy, independent republic, and a developing country with a growing economy and some infrastructural shortcoming. (HEx. A, B) In 2004, the first directly elected president was elected in free and fair elections. (HEx. B, p. 1) The government generally respects the human rights of its citizens and upholds

civil liberties. (*Id.*) Nonetheless, there have been problems with killings by security forces, vigilantism, harsh prison conditions, corruption in the judicial system, limitations on free speech, societal abuse and discrimination against religious groups, interference with freedom of religion, violence against women and children, trafficking in persons, child labor, and failure to enforce labor standards and worker rights. (*Id.*)

Since 1999, basic freedoms have expanded. (*Id.*) The constitution states that all persons shall have the right to be free from torture, inhuman, and degrading treatment. (*Id.*, p. 3) The law provides prisoners with the right to notify their families promptly and specifies that warrants must be produced during an arrest. (*Id.*, p.5) The law provides for judicial independence (*Id.*) and presumes defendants are innocent until proven guilty. (*Id.*, p.6) The constitution provides for freedom of speech and freedom of the press; however, the government at times, restricted these rights in practice. (*Id.*, p.8) The law provides for freedom of assembly and freedom of association, and the government generally respects this right. (*Id.*, p.10)

There is a widespread domestic and international perception that corruption is a part of daily life. (*Id.*, p.14) The law prohibits domestic abuse and other forms of violence against women. However, rape and domestic violence have been a problem. (*Id.*, p.15) Sexual harassment is against the law and actionable under the criminal code. (*Id.*, p.16)

Indonesian police and security forces take active measures against both ongoing threats posed by terrorists and violence elsewhere. (HEX. A, p. 2) Extremists may target both official and private interests, including hotels, clubs, and shopping centers. Extremist groups have attacked nightspots and places of entertainment in the name of religious or moral standards. (*Id.*) While Indonesia's counterterrorism efforts have been ongoing and partly successful, violent elements have demonstrated a willingness and ability to carry out deadly attacks with little or no warning. (*Id.*)

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 must be considered 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

Misuse of Information Technology Systems

Revised Adjudicative Guideline (AG) AG ¶ 39 explains the misuse of information technology systems security concern as follows:

39. *The Concern.* 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, and protection of information.

AG ¶ 40 describes conditions that could raise a security concern and may be disqualifying. The condition applicable to this case is:

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

In 1998, Applicant received a one-month suspension for viewing adult-oriented material on his company computer. He stopped his conduct until 2004 or 2005. To cope with the isolation and marital problems, Applicant began to view adult-oriented sites at work. In October 2005, Applicant resigned before an investigation was completed.

The mitigating condition under AG ¶ 41 is potentially applicable:

(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;

Applicant's surfing of adult content material on the computer at work was the result of marital and work difficulties. His first marriage was adversarial. His wife experienced panic attacks, was diagnosed as bipolar, and diagnosed as having a narcissistic aggressive personality disorder. She refused to take medication. Marriage counseling did not help and they divorced in 2007.

Following his divorce, Applicant no longer felt the need to escape to pornography or adult-oriented material. Applicant has received counseling from a psychologist specializing in men and sexual dysfunction. Applicant's prognosis is very good. He is emotionally stable and has no condition that would impair his judgment or reliability.

It has been four years since Applicant last viewed adult-oriented material at work. The factors leading to it are gone. His treatment and a favorable prognosis indicate this conduct is unlikely to recur. AG ¶ 41(a) applies.

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. The four conditions applicable to this case are:

(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;

(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:

(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;

There are two separate issues of personal conduct that are a concern: his surfing the internet at work and his failure to list his voluntary resignation on his e-QIP or during his first interview. Applicant engaged in inappropriate conduct and poor judgment at work, which resulted in a one-month suspension and his voluntary resignation for viewing adult-orientated material on a company computer. His use of the computer to view such sites was a pattern of rule violations and a significant misuse of his employer's time or resources. AG ¶ 16d (3) and 16d (4) apply. These facts constitute personal conduct a person might wish to conceal, as it adversely affects a person's professional and community standing. AG ¶ 16e applies.

Applicant did not reveal the suspension or his resignation on his e-QIP or during his first interview. Although he did list a more recent adverse September 2007 job firing for non-performance, which had occurred two years after his resignation. Applicant

knew his voluntary resignation occurred after misconduct and should have been listed on the e-QIP and during his initial interview.

Applicant asserted he was not trying to hide any information or mislead, but received inadequate advice on leaving his employment. At the initial interview, Applicant stated he voluntarily resigned because of company restructuring, his feeling of isolation, and company politics. Not only was the true reason for his voluntary resignation not revealed, but false reasons were presented.

Applicant gave a false explanation in an attempt to minimize his culpability. If an individual voluntarily offers an explanation or makes some statement tending to establish his innocence, and such explanation or statement is later shown to be false, such conduct must be considered. Ordinarily, an applicant does not find it necessary to invent or fabricate a voluntary explanation or statement tending to establish their innocence.

AG ¶ 17 provides conditions that could mitigate security concerns, none of which apply:

(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.

AG 17(a) does not apply because there was no prompt, good-faith effort to correct the omission, concealment, or falsification before being confronted with the facts. It was only at the second interview that he revealed the actual reason for his firing. At his termination, Applicant was told what would be revealed by his former employer if he voluntarily resigned. He was never told not to report the incident. AG 17(b) does not apply because the concealment was not 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.

AG 17(c) does not apply to the falsification because it is recent. It occurred on the 2007 e-QIP and during a February 2008 interview. However, this mitigating condition does apply to the net surfing in 1998 and 2005. Additionally, the viewing of adult content sites at work happened under such unique circumstances that it is unlikely to recur. AG 17(d) applies for Applicant acknowledged the conduct, received counseling, the stress of his prior marriage is gone, he is in a supportive marriage, and the behavior is unlikely to recur. AG 17(d) does not apply to the falsification because Applicant has not acknowledged his conduct.

AG 17(e) applies to the web surfing because Applicant has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress, but not to the falsification. AG 17(f) does not apply because the conduct was substantiated. AG 17(g) does not apply because association with persons involved in criminal activity was never alleged.

Applicant's failure to disclose his adverse employment history demonstrates a lack of candor. The government has an interest in examining all relevant and material adverse information about an Applicant before making a security clearance determination. The government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when it is perceived to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent violations or other concerns in the future, something the government relies on to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests. The personal conduct security concerns are resolved against Applicant.

Foreign Influence

AG ¶ 6 explains the foreign influence security concern as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The two conditions applicable to this case are:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion;

Applicant's wife is a permanent U.S. resident and must wait two years before she can apply for her U.S. citizenship. Applicant's mother-in-law, sister-in-law, and two brothers-in-law are citizens and residents of Indonesia. He has never met his in-laws and maintains no relationship with them. They do not speak English and he does not speak Indonesian.

There is only a remote possibility that Applicant could be placed in a position of having to choose between the interest of a foreign individual, group, organization, or government and the interests of the United States, especially because Indonesia has a significant lawless element, who may attempt to harm his in-laws to gain some kind of advantage over Applicant. AG ¶ 7(a), 7(b), and 7(d) apply.

Three of the mitigating conditions under AG ¶ 8 are potentially applicable: (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign

individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Based on his relationship and depth of loyalty to the United States, Applicant can be expected to resolve any conflict of interest in favor of U.S. interests. AG ¶ 18(b) applies. Applicant's communication with his in-laws is non-existent. His wife communicates with her mother and siblings in Indonesia.

Applicant's spouse is a registered U.S. alien waiting to obtain her U.S. citizenship. She completed high school and started college in the U.S. She has lived continuously in the U.S. since 2002. Applicant's current marriage is very positive and supportive. With his wife living with him in the U.S., there is nothing in the relationship that creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

A Guideline B decision concerning Indonesia must take into consideration the geopolitical situation in that country, as well as the dangers existing in Indonesia.² A "current and accurate assessment of the 'geopolitical situation' and the security/intelligence profile of the [foreign] country vis-à-vis the United States is crucial in Guideline B cases."³ The available information shows that Indonesia is an open society, governed through a democratically-elected legislature and executive, checked by an independent judiciary. While there are notable problems regarding human rights abuses by the Indonesian government, all of the available information shows Applicant's in-laws are not likely to be subject to coercive methods to obtain information from Applicant.

Applicant's relationship with his in-laws generates a security risk only if the contact creates a *heightened* risk of foreign exploitation, inducement, pressure or coercion (AG ¶ 7(a)). Security clearance decisions must be based on current DoD policy and standards (See ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003)). There is no heightened risk present.

² See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

³ See ISCR Case No. 07-05686 (App. Bd. November 12, 2005 at 4, footnote 3).

The risk of terrorism in Indonesia is a factor to consider in assessing the security risk. Over the past years, Indonesia has been victimized by brazen and spectacular episodes of terrorism. Terrorism, however, is indiscriminate by nature. The possibility that it may be employed against specific individuals, such as the family member of a security clearance holder, is higher in countries that openly espouse it, are hostile to the U.S., or are controlled partially by terrorist organizations. None of these characteristics apply to Indonesia.

Indonesia is a democracy. It is not a hostile, totalitarian state seeking to project its power worldwide through the brute intimidation or coercion of its citizens domestically and abroad. I conclude that there is little likelihood Indonesia, a nation friendly toward the United States, will try to leverage Applicant's relationship with his in-laws to gain access to the information with which Applicant works. Based on the foregoing, I conclude SOR ¶ 3.a through 3.d for the Applicant, and further conclude available information is sufficient to mitigate the security concerns raised under Guideline B.

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. The web surfing occurred more than four years ago and was the result of marital problems that no longer exist. Applicant's contact with his in-laws in Indonesia is non-existent. His wife is not a security concern because she is living with him in the U.S. However, the falsification 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. Under the Applicant's current circumstances more time needs to pass from his most recent falsification. A clearance is not recommended.

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, Information Technology:	FOR APPLICANT
Subparagraph 1.a –1.c:	For Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b and 2.c:	Against Applicant
Paragraph 3, Foreign Influence:	FOR APPLICANT
Subparagraph 3.a – 3.d:	For 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