



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
-----, ----- ) ISCR Case No. 09-02317  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

October 25, 2010

**Decision**

WHITE, David M., Administrative Judge:

Applicant sexually molested his two stepdaughters and indecently videotaped one of them during the first six months of 1998, following his retirement after 21 years as an Army Ranger. He served a couple months of confinement, and five years of probation during which he completed a sex offender treatment program. He subsequently incurred over \$15,000 in delinquent debt, most of which remains unpaid. He unpersuasively attempts to minimize the seriousness of his crimes by offering non-sexual explanations for his conduct, and his fiancée believes the charges were false and baseless allegations. He failed to fully mitigate resulting security concerns. Based upon a review of the case file, pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on November 14, 2008. On September 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines J (Criminal Conduct), D (Sexual Behavior), E (Personal Conduct), and F (Financial Considerations). The action was taken under 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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* that went into effect within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on October 8, 2009. He answered the SOR in writing (AR) on October 27, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 18, 2009, and the case was assigned to me on May 14, 2010. DOHA issued a Notice of Hearing on July 8, 2010, and I convened the hearing as scheduled on August 2, 2010. Due to unexplained mail delays, Applicant did not receive the Notice of Hearing until July 26, 2010. After an explanation of his right to at least 15 days of notice before his hearing, Applicant stated that he had sufficient time to prepare, wanted to proceed with the hearing as scheduled, and waived the 15-day notice period.<sup>1</sup> The Government offered exhibits (GE) 1 through 10, which were admitted without objection. Applicant offered exhibits (AE) A and B, which were admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until August 16, 2010, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on August 10, 2010. Applicant submitted AE C through J within the time provided. This evidence was admitted without objection, and the record was closed.

### **Findings of Fact**

Applicant is a 52-year-old employee of a defense contractor, where he has worked since May 2008. He retired from active duty in September 1997, after 21 years of military service. He held a security clearance for his last 15 or 16 years in the Army. He is twice divorced, with three children from his first marriage, and two stepchildren from his second who still consider him to be their father. He currently lives with another woman and her two sons.<sup>2</sup>

In his response to the SOR, Applicant admitted the factual allegations in SOR ¶¶ 1.a, and 4.a through h. He purported to deny the policy restatements concerning each adjudicative guideline in all four introductory paragraphs, but those explanations of the rationale underlying potential security concerns are not open to dispute. He also denied SOR ¶¶ 2.a, and 3.a, although those paragraphs merely cited the admitted factual allegations in SOR ¶ 1.a by reference.<sup>3</sup> Applicant's denials are interpreted to mean that he does not agree that his admitted actions support security concerns under the respective guidelines. Applicant's admissions, including his statements in response to DOHA interrogatories,<sup>4</sup> are incorporated in the following findings.

---

<sup>1</sup>Transcript (Tr.) 11-14.

<sup>2</sup>GE 1; AE B at 1, 2; Tr. 48-50.

<sup>3</sup>AR.

<sup>4</sup>GE 4; GE 5.

Applicant's second wife moved to a different city to obtain better employment in late 1997, shortly after he retired from active duty and lost a substantial portion of his previous income. He remained in their home with his two stepdaughters, ages 14 and 12, so they could finish school. He was also attending college classes and looking for work. Applicant explained that these circumstances caused him to be under great stress.<sup>5</sup>

During January and March 1998, while wrestling with the girls, he lifted their shirts and bras, fondled their breasts, and tweaked their nipples. Applicant denied having any sexual motivation for these acts, and explained that he was trying to make them angry as part of his effort to teach them self-defense tactics. He nevertheless admitted the fondling was "inappropriate," "wrong," "bad judgment," and "very stupid of me."<sup>6</sup> When asked whether he had told his wife he had done this, he responded, "Well, she - - the oldest daughter, she'd parade around the house all the time and I'd always have to get on her to put some clothes on."<sup>7</sup>

From June 4 to 11, 1998, Applicant visited his wife in the other city, and left the girls home alone. On June 10, 1998, the girls invited two boys to come over for a party. Seven or eight other uninvited boys also attended the party, which began around 10 p.m. and lasted until sometime the next morning. Applicant returned home on June 11, and now claims that the house was a mess, with remnants of marijuana and liquor all around and all the food gone. He cited this as one of the big stressors that caused his criminal actions toward his daughters. In the police report he initially filed on July 13, 1998, however, he said he first discovered his revolver was missing on June 15, 1998, searched the house for it for two weeks, then called his wife to see if she had it. He said it was on July 10, 1998, that he discovered from the girls that they had hosted this party, and that was when the revolver, a bicycle, and some alcohol were stolen.<sup>8</sup>

Applicant said that in response to this and other out-of-control behavior by his older stepdaughter, he decided to hide a video camera in her closet to tape her activities when she locked herself in her room. On June 13, 1998, he taped her while she was naked and dressing after taking a shower, and she noticed the camera recording her. He said during the hearing that he videotaped her from the closet "more than once."<sup>9</sup> He later gave the tape to his wife. Applicant's stepdaughter told a friend about him taping her, and the friend's mother recovered the tape from his wife and turned it in to the police.<sup>10</sup>

---

<sup>5</sup>Tr. 37-40; AE F at 1.

<sup>6</sup>Tr. 40-43.

<sup>7</sup>Tr. 42-43.

<sup>8</sup>Tr. 38-39; AE F at 5-6.

<sup>9</sup>GE 7 at 11; Tr. 39-40.

<sup>10</sup>Tr. 43-45.

During the subsequent investigation, Applicant admitted rubbing his daughters' breasts and tweaking their nipples while wrestling with them, and placing the video camera in the older daughter's bedroom closet to make a tape that clearly showed her bare breasts, as the girls claimed. He was subsequently charged with two felony counts of Sexual Abuse of a Minor in the Second Degree (one each in January and March 1998), and one felony count of Indecent Viewing (in May or June 1998). He negotiated a plea bargain under which he pled no contest to the Indecent Viewing felony, and the Sexual Abuse of a Minor charges were dismissed. On March 5, 1999, he was sentenced to two years confinement, with all but three months suspended, followed by five years of supervised probation to include active participation in, and successful completion of, an approved sex offender treatment program. Applicant was not required to register as a sex offender, however.<sup>11</sup>

Applicant says that he successfully completed a five-year sexual offender group treatment program from May 1999 to May 2004, and was released from probation after five years without incident. He was unable to provide any documentation to corroborate these facts, or any evidence of his prognosis upon release from the program.<sup>12</sup> During his testimony, Department Counsel asked him whether he saw himself as different from the other members of his sex offender treatment group. He responded, "In some parts and some that I was more privileged than them in that I had a better education and that I had a job. I was still with them and we had the same issues."<sup>13</sup> He further stated that he told the social worker who oversaw his treatment program that he "would like to take a refresher course with him on a weekly one on one basis."<sup>14</sup>

Applicant said that he has reconciled with his stepdaughters, and has told two people from work, including his boss, about his crimes. He also said that he has told the woman he currently lives with about what he did, because he "wanted to be up front and tell her and let her know everything about me so that there wouldn't be no surprises."<sup>15</sup> However, the woman wrote the following about her understanding of Applicant's past:

[His] personal character is beyond reproach. He is an honorable man with honorable intentions. I am aware of a smear on his character in the past regarding an incident involving his step-daughter. This is an unbelievable untruthful account of his behavior and his intentions in that matter. His ex-wife and step-daughter will both attest to the truth of this incident. [He] could never do something like that with those intentions. He is just not that sort of man. He raised those girls and loved them like his own daughters

---

<sup>11</sup>GE 7.

<sup>12</sup>Tr. 45-48; AE F at 2.

<sup>13</sup>Tr. 47-48.

<sup>14</sup>AE F at 2.

<sup>15</sup>Tr. 48-51.

and still does. He has always had healthy, normal relationships and is sickened and very disheartened by these allegations and this smear on his good name.<sup>16</sup>

Applicant's financial problems also began upon his retirement from active duty. He and his second wife incurred a number of delinquent debts before their divorce in early 2002. He was then unemployed from September 2003 to November 2007, during which time he could not resolve his delinquencies. Since December 2007, he has worked under Defense support services contracts, and he continues to draw military retirement pay.<sup>17</sup>

Applicant admitted owing all the delinquent debts alleged in SOR ¶ 4 as of September 30, 2009. He testified that he paid the \$58 collection item alleged in SOR ¶ 4.a, but could not find a receipt to corroborate that fact. His credit bureau reports (CBRs) reflect that debt as unpaid in June 2009, but paid in full by November 2009.<sup>18</sup> He did not recognize the \$61 debt listed in SOR ¶ 4.b, but said he easily could and would pay it if he still owed it. That debt was a collection listing for a \$41 medical debt. It appeared on his December 2008 and July 2009 CBRs, but was no longer listed on his December 2009 or July 2010 CBRs.<sup>19</sup>

The debts listed in SOR ¶¶ 4.c through 4.g are five accounts all held by the same collection agency. Applicant made an agreement allowing them to withdraw \$150 per month from his bank account starting in October 2009. The employee with whom he was working was fired shortly thereafter, and his account was not processed for several months. His regular payments resumed in April 2010. His account records reflect that the agency applied his first five payments, totaling \$750, to fully pay off the debts listed in SOR ¶ 4.c, 4.e, and three other small collection accounts not listed on the SOR. No payments were yet applied toward the debt listed in SOR ¶ 4.d, which continues to show a \$550 balance due. The agency applied \$150 toward the account alleged in SOR ¶ 4.f, which shows a current balance of \$221 with accumulated interest. It also applied \$128 toward the account listed in SOR ¶ 4.g, which now reflects a total due of \$1,107 with interest. The remaining debts all involved emergency medical services in 2002 and 2003, after his ex-wife took him off her insurance policy without his knowledge. He subsequently enrolled for Veterans Administration medical care and has health insurance through his current employer.<sup>20</sup>

---

<sup>16</sup>AE B at 2.

<sup>17</sup>GE 1; AE E; Tr. 51-52, 61-62.

<sup>18</sup>Tr. 52-53; GE 6; GE 8.

<sup>19</sup>GE 2; GE 6; GE 8; GE 10; Tr. 53.

<sup>20</sup>Tr. 54-60, 68-69; AE E.

Applicant's final delinquent debt is for a credit card he and his ex-wife jointly used, and for which he was awarded responsibility in their divorce decree. He has not made any payments toward this \$13,317 debt. He received a couple offers from the collection agency to settle the account for a lump-sum payment of around \$6,000, but he did not have the money available to accept those offers. He is currently saving money to be able to settle this debt, and intends to do so. He has \$3,000 saved to date.<sup>21</sup>

Applicant provided a budget estimate reflecting a net remainder of \$170 per month, although he failed to include what he described during the hearing as up to \$600 per month in utility bills. He planned to marry the woman he lives with on September 21, 2010, and her substantial income as a nurse was not included in the budget estimates. She does not have any debt, and Applicant anticipates incurring no future delinquent debt.<sup>22</sup>

Applicant earned two Meritorious Service Medals, two Army Commendation Medals, six Army Achievement Medals, and five Good Conduct Medals during his active service as a Ranger, and was honorably discharged as a Sergeant First Class. He is a high school graduate, has 28 hours of college credit to date, and attended numerous training and certification classes in a wide variety of subjects. His Army NCO Evaluation Reports reflected excellent service in responsible positions. His current position involves operation and maintenance of training range equipment.<sup>23</sup> Numerous supervisors, coworkers, friends, and family members wrote letters describing Applicant's good character, trustworthiness, dedication, and outstanding potential.<sup>24</sup>

## **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept.

---

<sup>21</sup>Tr. 60-63; AE E at 2.

<sup>22</sup>AE E; Tr. 63-66.

<sup>23</sup>AE D; AE G; AE H; AE I; AE J.

<sup>24</sup>AE B; AE C.

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 the 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, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

## **Analysis**

### **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The conditions supported by this record are: ¶ 31(a) “a single serious crime or multiple lesser offenses”; and ¶ 31(c) “allegation or admission of a criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted.” Applicant admitted committing Sexual Abuse of a Minor with both of his stepdaughters, and Indecent Viewing of the older one, over a six-month period. All three of these crimes are felonies. His claims of non-sexual motives for committing these

crimes were not credible, particularly in light of his admissions that he had the same issues as the other members of his sex offender treatment program, and is seeking additional voluntary treatment from the program counselor. Furthermore, if he was not intending to film his stepdaughter with her clothes off, he would logically have destroyed or over-taped those images rather than keeping them.

AG ¶ 32 provides conditions that could mitigate criminal conduct security concerns. These are:

- (a) so much time has elapsed since the criminal 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;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant asserts that the 12 years since his last sex offense against his teenage stepdaughters, and the change in his circumstances since then generate mitigation under AG ¶ 32(a). These factors do begin to demonstrate that recurrence is less likely. However, the characterization of his crimes as an “unbelievable untruthful account of his behavior and his intentions in that matter,” by his fiancée, and his continuing attempt to justify his “inappropriate” actions as having non-sexual motivations arising from his stepdaughters’ behavior toward him preclude a reasonable finding that those crimes no longer cast doubt on his reliability, trustworthiness, or good judgment.

Applicant further contends that he committed these crimes because he was under great stress from his recent retirement, unemployment, attending college, and his wife’s move to another city for work. While it is true that these circumstances have since changed, Applicant offered no logical connection to explain why these particular issues pressured him to sexually molest his stepdaughters and surreptitiously film one of them while she was undressed. In addition, he voluntarily chose to enter into each of these situations rather than continue his Army service. He accordingly failed to establish mitigation under AG ¶ 32(b).

There is no evidence that Applicant did not commit any of the three crimes with which he was charged. To the contrary, he admitted them. AG ¶ 32(c) is inapplicable. Applicant successfully completed the sex offender treatment program, and has not re-offended for 12 years. He claims remorse, but fails to acknowledge the sexual nature of



his crimes. His recent employment record has been good. Subject to the limitations discussed above with respect to AG ¶ 32(a), these factors establish limited mitigation under AG ¶ 32(d).

#### **Guideline D, Sexual Behavior**

AG ¶ 12 expresses the security concern under this guideline:

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 describes conditions that could raise a security concern and may be disqualifying (DCs):

(a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;

(b) a pattern of compulsive, self-destructive, or high risk sexual behavior that the person is unable to stop or that may be symptomatic of a personality disorder;

(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.

AG ¶ 14 provides conditions that could mitigate security concerns (MCs):

(a) the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;

(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.

Applicant's sexual molestation of his two stepdaughters in January and March 1998, and his indecent viewing of the older girl in May or June 1998, were felonies and establish security concerns under AG ¶ 13(a). There is insufficient evidence to support potential disqualification under AG ¶ 13(b). The degree and extent of sexual misconduct that Applicant committed, combined with the high regard in which he is now held by friends, coworkers, and his fiancée, who were not shown to be remotely aware of the true nature of his conduct, establishes an ongoing vulnerability to coercion, exploitation, or duress under AG ¶ 13(c). Finally, as Applicant admitted, his sexual conduct reflected lack of judgment under AG ¶ 13(d). The burden thus shifts to Applicant to extenuate or mitigate these security concerns flowing from his admitted behavior.

Applicant's sexual misconduct occurred when he was 40 years old, precluding mitigation under AG ¶ 14(a). Applicant's sexual behavior of concern all took place more than 12 years ago, but involved multiple incidents and victims, and was not under any unusual circumstances that might explain it. Its likelihood to recur is reduced by his lengthy abstention from such behavior, but he remains concerned enough about his possible temptation to re-offend that he asked his sex offender treatment program counselor to resume treatment. This is commendable, but also reflects his own rational doubts concerning his current reliability, trustworthiness, and judgment, and precludes more than minimal mitigation under AG 14(b).

Applicant's conviction for Indecent Viewing was shown to be sufficiently well known that, in itself, might support mitigation under AG ¶ 14(c). However, the nature and extent of the behavior underlying that conviction, as well as the other molestation offenses that were dismissed in the plea bargain, were not shown to be known to the many friends, coworkers, and fiancée whose high regard he worked hard to establish and now rightfully values a great deal. Accordingly, his sexual behavior continues to serve as a potent basis for coercion, exploitation, or duress, and AG ¶ 14(c) was not established. Much of Applicant's sexual behavior of security concern was private, in that it was not known to others. That would alleviate concerns under AG ¶ 13(d) for public sexual acts, but his conduct did not reflect good judgment or discretion, and its private nature forms the basis for ongoing coercion concerns under AG ¶ 13(c).

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to 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.

AG ¶ 16 describes the DCs under this guideline. The specific Guideline E concern raised by the SOR allegations is:

(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 admitted to police investigators that he sexually molested his two stepdaughters and produced an illegal sexual videotape of one of them. He entered a plea agreement under which he was convicted of the latter offense. His fiancée, pending their imminent marriage, and upon whom he will be depending for both emotional and financial support going forward, described her understanding of his past in terms that clearly demonstrated her beliefs that he did nothing wrong and was falsely accused. None of the friends and coworkers who wrote good-character letters mentioned any knowledge of his crimes, of which he was admittedly ashamed. These facts establish concerns under AG ¶ 16(e), and shift the burden to him to establish mitigation.

AG ¶ 17 provides personal conduct MCs. The only MCs with potential applicability to the foregoing security concerns are:

(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.

Minimal, if any, mitigation under AG ¶ 17(c) was established, for the reasons discussed above concerning AG ¶¶ 32(a) and 14(b). AG ¶ 17(d) was only partially established because he unpersuasively tried to minimize the seriousness of his crimes and their sexual nature. He completed, and may resume, counseling to reduce the likelihood of recurrence of the underlying conduct, but his ongoing concealment of the nature of his actions from friends, coworkers, and his fiancée portends continuing vulnerability to exploitation, manipulation, and duress. AG ¶ 17(e) was therefore not established.

## **Guideline F, Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18:

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 overextended is at risk of having to engage in illegal acts to generate funds.

The evidence established security concerns under two Guideline F DCs, as set forth in AG ¶ 19(a) "inability or unwillingness to satisfy debts"; and ¶ 19(c) "a history of not meeting financial obligations." Applicant's history of delinquent debt stretches back more than eight years, and continues in large part at present. He started a program to repay some of his smaller debts after applying for his security clearance, but has demonstrated repayment of less than \$900 toward more than \$15,000 in delinquent debt. At \$150 per month, his remaining debts to the collection agency will be repaid in about a year. It was unclear when, and under what circumstances, his major \$13,317 debt for the credit card will be resolved.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems:

- (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;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquent indebtedness is ongoing and involved multiple creditors over at least eight years. He therefore failed to establish mitigation under AG ¶ 20(a). He failed to show how his divorce resulted in the indebtedness. He did undergo significant periods of unemployment, but only after his voluntary retirement from the service at a time that was entirely under his control. The facts that he did not incur much additional delinquent debt, and that he recently started repaying it tend to establish responsible actions under the circumstances, but only partial mitigation under AG ¶ 20(b) was established. Applicant showed no evidence of financial counseling, but has made and partially complied with an arrangement to repay all but one large delinquency

over the next year. He currently has no arrangement in place, nor evidence of a workable plan to resolve his largest delinquency, exceeding \$13,000. Thus, only partial mitigation was established under AG ¶¶ 20(c) and (d).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant's sexual molestation and indecent viewing of his teenage stepdaughters occurred when he was a mature adult who knew what he was doing was wrong. It took place 12 years ago, but he knowingly engaged in all of these acts and has subsequently sought to minimize their seriousness and conceal their sexual motivation from those whose opinion he values most. His claims that post-service stresses of attending college, not working, and geographic separation from his wife caused him to commit these crimes ring hollow since he voluntarily chose each of these conditions, and served 21 successful years as an Army Ranger. He also incurred substantial delinquent debt, most of which remains outstanding. He has begun to establish rehabilitation, but needs to follow through with debt repayment plans and admit the nature and extent of his sexual crimes in order to relieve the substantial continuing potential for pressure, coercion, exploitation, or duress.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his criminal conduct, sexual behavior, personal conduct and financial considerations.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline D:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT
Subparagraph 4.a:	For Applicant
Subparagraph 4.b:	For Applicant
Subparagraph 4.c:	For Applicant
Subparagraph 4.d:	For Applicant
Subparagraph 4.e:	For Applicant
Subparagraph 4.f:	For Applicant
Subparagraph 4.g:	For Applicant
Subparagraph 4.h:	Against 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge