



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 09-08575  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esquire, Department Counsel  
For Applicant: *Pro se*

March 3, 2011  
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**Decision**  
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WHITE, David M., Administrative Judge:

Applicant sexually assaulted his two sisters, three cousins, and the six-year-old daughter of friends over several years. He was reported to police for Serious Domestic Assault of his estranged wife. He incurred over \$34,500 in delinquent debts over the past six years, with no evidence of payment toward, or other resolution of, any of those debts. Resulting security concerns were not mitigated. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on July 8, 2009.<sup>1</sup> On June 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines E (Personal Conduct), D (Sexual Behavior), and F (Financial Considerations).<sup>2</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive

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<sup>1</sup>Item 5.

<sup>2</sup>Item 1.

5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on June 17, 2010, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on August 17, 2010. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on August 24, 2010, and returned it to DOHA. He provided no further response to the FORM within the 30-day period, did not request additional time to respond, and expressed no objection to my consideration of the evidence submitted by Department Counsel. I received the case assignment on November 15, 2010.

### **Findings of Fact**

Applicant is a 29-year-old employee of a defense contractor, where he was hired in February 2009. During the preceding four and a half years, except for a couple of months between jobs, he was continuously employed in a number of different aviation positions. He has never held a security clearance or served in the military. He is married, but separated, with a two-year-old daughter.<sup>5</sup> In his response to the SOR, he admitted all but one allegation. He denied SOR ¶ 3.p, without explanation.<sup>6</sup> Applicant's admissions, including his responses to DOHA interrogatories,<sup>7</sup> are incorporated in the following findings.

Applicant was interviewed by an investigator from the Office of Personnel Management (OPM) on October 26, 2009. During that interview, he discussed having sexually assaulted the six-year-old daughter of some family friends during 1999, when he was 17 years old. He claimed not to be able to recall the specifics, but acknowledged being confronted over the matter in 2001 by the victim's father, and that he subsequently apologized to the child and her parents for his actions.<sup>8</sup>

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<sup>3</sup>Item 4.

<sup>4</sup>The Government submitted 12 Items in support of the SOR allegations.

<sup>5</sup>Item 5.

<sup>6</sup>Item 4.

<sup>7</sup>Items 6, 7, and 8.

<sup>8</sup>Item 6 at 9.

When asked whether this girl was his only minor victim of sexual assault, Applicant equivocated, and asked for further definitions of “sexual assault” and “minor.” He then admitted to sexually assaulting his two sisters, one of whom is eight years, eight months younger than he; and the other of whom is ten years, five months younger.<sup>9</sup> He also admitted sexually assaulting three female cousins, aged from 12 to 18 years, over the same period of two to three years. He said that this sexual activity with his sisters and cousins ended in December 2000, when he moved to a distant state.<sup>10</sup> His SF 86, however, reflects that he did not move to that state until July 2004.<sup>11</sup> He further stated that the sexual activity with his sisters and cousins ended in July 2000, five months after he turned age 18. Applicant has undergone no treatment or counseling for sexual problems.<sup>12</sup>

Applicant told the investigator that he had contacted the fathers of all his related female victims, told them what had happened, and apologized for his actions. He said he was inspired to do so when he realized that they would be giving their daughters in marriage and he “wanted them to know that their daughters had been ‘dirtied’.”<sup>13</sup> He further said that all the related family members have forgiven him.

A police incident report from Applicant’s home town was filed on October 6, 2006, alleging that, on that date, Applicant and his next-younger brother (three and a half years his junior) sexually abused their two sisters by forcibly fondling them.<sup>14</sup> On that date, Applicant was 24 years old, and his brother was 21. Their sisters were 15 and 14.

About two months after their daughter was born, Applicant’s wife left him and moved back to his hometown to live with his parents because he assaulted her. He did not deny the assault, or others in which she alleged that he beat and choked her. However, he claimed that the incidents happened while he was asleep. His wife filed a police complaint on March 14, 2009, in his hometown, resulting in an Incident Report charging him with Serious Domestic Assault.<sup>15</sup> He subsequently attended marriage counseling with a psychiatrist, once a week for nine weeks. He then ended this counseling, without having completed treatment or obtaining any prognosis.<sup>16</sup>

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<sup>9</sup>Item 5 at 52, 53.

<sup>10</sup>Item 6 at 10.

<sup>11</sup>Item 5 at 17, 33.

<sup>12</sup>Item 6 at 10, 11.

<sup>13</sup>Item 6 at 10.

<sup>14</sup>Item 10.

<sup>15</sup>Item 5 at 45, 46, 49; Item 6 at 5, 8; Item 9.

<sup>16</sup>Item 6 at 8-9; Item 7.

Applicant said that his financial problems began when his wife moved to live with him in December 2005.<sup>17</sup> Since that time, he incurred the 15 delinquent debts as alleged in SOR ¶¶ 3.a through 3.o, totaling \$34,546. These debts range from a \$26 telephone bill to a \$7,059 charged-off credit card account that is in collections. Applicant admitted to each of these debts.<sup>18</sup> He denied the \$350 debt alleged in SOR ¶ 3.p, involving an overdrawn checking account. This debt does not appear on his credit reports. The allegation was based on his description of the debt to an OPM investigator. He provided no reason for his formal denial of the debt, nor any explanation of what happened to it.<sup>19</sup>

On March 8, 2010, Applicant responded to interrogatories from DOHA concerning his debts. He explained that he had not made any payments toward any of them. He said that he was “just over halfway building up my ‘emergency fund’ see [website address]. So currently I have done nothing to resolve [any of the debts].”<sup>20</sup> He did not provide any evidence to support his assertion that he was saving any money. Nor did he provide evidence of either financial counseling or a current budget that would indicate that additional financial problems are unlikely to arise.

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **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.

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<sup>17</sup>Item 6 at 6.

<sup>18</sup>Item 4; Item 11; Item 12.

<sup>19</sup>Item 6 at 7; Item 4.

<sup>20</sup>Item 8.

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 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 that he sexually assaulted and molested his two young sisters, three cousins, and the six-year-old daughter of family friends, over several years, including at least several times after he turned 18. He has yet to be formally charged with any of these sex crimes. His Serious Domestic Assault of his wife led to their separation in March 2009, and a resulting police report in his hometown. Applicant made no showing that his employer had any knowledge of these matters. There is also no indication that his wife is aware of his extensive history of child molestation. These facts establish concerns under AG ¶ 16(e), and shift the burden to Applicant 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. Applicant's sexual and domestic assaults were repeated and relatively recent. No unique circumstances were established to provide any justification for this conduct, which could easily recur and casts serious ongoing doubt on Applicant's reliability, trustworthiness, and judgment. AG ¶ 17(d) was not established because he unpersuasively tried to minimize the seriousness of his crimes and their sexual nature. He attended some marriage counseling, but his ongoing concealment of the nature of his actions from friends, coworkers, and his wife portends continuing vulnerability to exploitation, manipulation, and duress. AG ¶ 17(e) was therefore not established.

#### **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. The sexual behavior DCs raised by the evidence in this case are:

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

Applicant's sexual assaults and molestation of his two young sisters, his three cousins, and the six-year-old daughter of family friends establish security concerns under AG ¶¶ 13(a), (b), and (c). The degree and extent of sexual misconduct that Applicant committed reflect a serious lack of judgment or discretion, and establish an ongoing vulnerability to coercion, exploitation, or duress. The burden thus shifts to Applicant to extenuate or mitigate these security concerns flowing from his admitted behavior.

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.

Some of Applicant's sexual misconduct occurred when he was under 18 years old, but it continued after he reached the age of majority, precluding mitigation under AG ¶ 14(a). In particular, a police report reflects his forcible fondling of his sisters in October 2006, when he was 24 years old. Applicant's sexual behavior of concern involved multiple incidents and victims, and was not under any unusual circumstances

that might explain it. Applicant offered no evidence from which to conclude that recurrence of his predatory sexual gratification is unlikely, or that his reliability and judgment have improved. Accordingly, mitigation under AG ¶ 14(b) was not established. Applicant also failed to demonstrate mitigation under AG ¶ 14(c), as discussed above under Guideline E. 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 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.

Department Counsel argued that the evidence established security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has been unable or unwilling to satisfy numerous debts over the past six years, totaling over \$34,500. Whether this was through unwillingness or inability, or some combination of both, is not clear from the record evidence, but no other explanation was offered. AG ¶¶ 19(a) and (c) were accordingly established, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

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

- (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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's delinquent debts, in excess of \$34,500, arose over the past six years and continue to date. Applicant failed to demonstrate that such problems are unlikely to continue or recur, or that his reliability and trustworthiness have improved. The evidence does not support the application of AG ¶ 20(a).

Applicant was continuously employed throughout the period in question, with minor exceptions, according to his security clearance application, and offered no evidence that would support mitigation under AG ¶ 20(b). He and his wife simply spent more than they earned on a regular basis. Applicant did not undergo financial counseling, and he offered no evidence to establish clear indications that the problem is being resolved or is under control. MC 20(c) is therefore inapplicable.

Applicant offered no evidence to corroborate any payment to any of the SOR-listed creditors. Nor did he submit evidence of any arrangements to repay or otherwise resolve any of those debts. No mitigation under AG ¶ 20(d) was proven. Finally, Applicant denied the debt alleged in SOR ¶ 3.p, but he provided no proof that it was not his debt, or that he took any action to otherwise resolve the issue. He therefore failed to meet his burden of proof under AG ¶ 20(e).

### **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 is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility spans the past six years, and continues at present. It involves substantial debts to many different creditors totaling more than \$34,500, with no indication that such conduct has ended. He demonstrated neither the means nor the willingness to fulfill his legal obligations to these creditors. He also engaged in a pattern of sexually assaulting and abusing young girls to whom he was related or knew as a family friend, and physically assaulted his wife on multiple occasions before she left him. He offered no evidence of rehabilitation or of responsible conduct in other areas of his life. The potential for pressure, coercion, and duress from all of this misconduct remains undiminished.

Overall, the record evidence leaves me with 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 personal conduct, sexual behavior, 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 E:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant
Paragraph 2, Guideline D:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a through 3.p	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.

DAVID M. WHITE  
Administrative Judge