



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



In the matter of:)
)
-----) ISCR Case No. 10-10507
)
Applicant for Security Clearance)

Appearances

For Government: Paul Delaney, Esq., Department Counsel
For Applicant: *Pro se*

04/12/2012

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s sexual abuse of a 15-year-old child while on active duty in 1999 resulted in court-martial convictions for two offenses. In 2005, he was convicted of failure to register as a sexual offender and failure to report to state officials. He failed to make sufficient progress resolving nine delinquent debts totaling more than \$35,000. Personal conduct and sexual behavior concerns are mitigated as duplications of the criminal conduct concern; however, criminal conduct and financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On May 6, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF-86). (GE 1) On July 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guidelines J (criminal conduct), D (sexual behavior), E (personal conduct), and F (financial considerations). (Hearing Exhibit (HE) 3) The SOR detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge to determine whether his clearance should be granted, continued, denied, or revoked.

On August 19, 2011, Applicant responded to the SOR. (HE 4) On February 17, 2012, Department Counsel indicated he was ready to proceed on Applicant's case. On February 23, 2012, DOHA assigned Applicant's case to me. On March 1, 2012, DOHA issued a hearing notice, setting the hearing for March 28, 2012. (HE 2) On March 15, 2012, the location of the hearing was corrected. (HE 1) Applicant waived any issue concerning notice for his hearing. (Tr. 11-12) Applicant's hearing was held as scheduled on March 28, 2012.

At the hearing, Department Counsel offered ten exhibits (Tr. 14; GE 1-10), and Applicant offered eight exhibits. (Tr. 15-17; AE A-H) Department Counsel noted that one of Applicant's character statements was unsigned. (AE B) There were no other objections, and I admitted GE 1-10 and AE A-I. (Tr. 17-18) Additionally, I admitted the hearing notices, SOR, and Applicant's response to the SOR. (HE 1-4) Shortly after his hearing, Applicant provided a credit report dated March 8, 2012, which was admitted without objection. (AE I) On April 9, 2012, I received the transcript.

Findings of Fact¹

Applicant's SOR response admitted all of the SOR allegations. (HE 4) His admissions are accepted as factual findings.

Applicant is a 34-year-old voice systems technician employed by a defense contractor. (Tr. 4, 20) A defense contractor has employed him since June 2010. (Tr. 20, 21, 36) In 1995, he graduated from high school. (Tr. 5) In 2011, he was awarded an associate's degree, and he has started working on his bachelor's degree. (Tr. 5) In 2000, he married, and his children are ages 7, 10, and 13. (Tr. 6, 19) His 13-year-old child is from a prior relationship. He served in the Air Force from 1995 to 2000. (Tr. 22; GE 1)

Sexual Behavior, Criminal Conduct, and Personal Conduct

In August 1999, Applicant was 22 years old and on active duty. He had sexual intercourse and engaged in sodomy with a 15-year-old child at her residence. (HE 4; SOR ¶¶ 1.a; 2.a; 3a; GE 1, 6) Applicant pleaded guilty to carnal knowledge and sodomy, in violation of Articles 120 and 125, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 920 and 925, at a special court-martial. (Tr. 25-26; HE 4) He was sentenced to a reprimand, to be reduced from E-4 to E-1, to forfeit \$335 pay per month

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

for six months, and to be confined for six months. (Tr. 22, 26; GE 7) He served five months of confinement. (Tr. 26) Two months after he was released from confinement, he was discharged for misconduct due to sexual perversion, and he received a general discharge under honorable conditions. (Tr. 26-28, 31; GE 1, HE 4)

Department Counsel asked applicant to explain the circumstances of the offense and the following colloquy occurred:

Q. Okay. Can you describe the circumstances of what occurred that resulted in this charge against you?

A. I had met a female in 1999. We had a relationship, a one-night relationship then, at which time I wasn't aware of her correct age.

Q. Where did you meet her?

A. I met her through a friend of mine at a party, -- I'm not too sure on the logistics.

Q. So the first time you met her was the night that you had sexual activity with her?

A. Yes sir.

Q. Okay. Now you said you weren't too sure of her age, but you knew she was under sixteen? Is that right?

A. No, I did not.

(Tr. 23) Department Counsel confronted Applicant with the statement he made to the police about this offense, where he admitted that the child-victim told Applicant her age, and said she liked older guys. (Tr. 24; GE 6)² Applicant then admitted that he knew she was 15 when he engaged in sexual activity with her. (Tr. 24)

In 2005, Applicant was arrested and charged with failure to register as a sexual offender and failure to report to authorities as a sexual offender. (Tr. 28-29; HE 4; SOR ¶¶ 1.b, 2.a) The two offenses are third-degree felonies. (HE 4) At his hearing, Applicant said that he had actually registered as a sexual offender; however, the police lost his registration documentation, and Applicant did not retain a copy of the documentation. (Tr. 29-30) Applicant was represented by counsel, and he said he pleaded guilty because he failed to retain his copy of the registration documentation. (Tr. 30; HE 4) He was sentenced to 10 days of confinement, which amounted to time served. (Tr. 30) He is currently registered as a sexual offender as required by the state law where he is a resident. (Tr. 31)

²The *Manual for Courts-Martial (MCM)*, 1994, paragraph 45c(2) provides, "It is no defense that the accused is ignorant or misinformed as to the true age of the female, or that she was of prior unchaste character; it is the fact of the girl's age and not his knowledge or belief which fixes his criminal responsibility."

Financial Considerations

Applicant's history of delinquent debt is documented in his SF-86, credit reports, OPM interview, SOR response, and hearing. The SOR alleges 14 delinquent debts totaling \$38,223³ as follows: SOR ¶ 4.a is a judgment filed in 2007, alleging a delinquent debt for \$16,341; SOR ¶ 4.b is a delinquent telecommunications debt for \$115; SOR ¶ 4.c is a medical collection debt for \$379; SOR ¶ 4.d contains two delinquent debts for \$273(1) and \$761(2); SOR ¶ 4.e is a collection debt for \$403; SOR ¶ 4.f is a mortgage debt that is delinquent in the amount of \$12,238; SOR ¶ 4.g is a delinquent debt for \$893; SOR ¶ 4.h is a delinquent debt resulting from a repossessed vehicle for \$4,991; SOR ¶ 4.i is a medical collection debt for \$281;⁴ SOR ¶ 4.j is a delinquent debt for \$175; SOR ¶ 4.k is a delinquent debt for \$403;⁵ SOR ¶ 4.l is a medical collection debt for \$553; and SOR ¶ 4.m is an insurance collection debt for \$295. (HE 2)

Applicant has not made any payments to any of the SOR creditors. (Tr. 32) Applicant noticed that four of the SOR creditors were not on his current credit report. (Tr. 32, 52-53; AE I) The following five SOR debts were not on his March 8, 2012 credit report: SOR ¶ 4.d(2) for \$761; SOR ¶ 4.e for \$403; SOR ¶ 4.i for \$281; SOR ¶ 4.j for \$175; and SOR ¶ 4.l for \$553. (AE I) Two new debts were listed on his March 8, 2012 credit report: collection account for \$773 (AE I at 17-18, 50) and collection account for \$413.⁶ (AE I at 28, 38, 51) He did not provide any correspondence to creditors or credit reporting companies disputing any of the SOR debts. (Tr. 32-33)

³After the amounts of two SOR debts were corrected, as indicated in n. 4, 5, *infra*, the 14 SOR debts totaled \$38,556. (Tr. 50-51)

⁴With the concurrence of the parties, the amount of the debt in SOR ¶ 4.i was reduced from \$403 to \$281. (Tr. 50-51)

⁵With the concurrence of the parties, the amount of the debt in SOR ¶ 4.i was increased from \$403 to \$858. (Tr. 50-51)

⁶The SOR did not allege these two debts, and it did not allege that Applicant initially attempted at his hearing to deceive me about knowing the age of the child victim with whom he engaged in sexual activity in 1999. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have not considered the non-SOR derogatory financial information about these two debts for any purpose. I have considered his attempt to provide false information in regard to his credibility. I also considered his subsequent admission at his hearing that he knew the child victim's age as a positive reflection of his credibility. See the whole-person concept at pages 15-16, *infra*.

Applicant's largest SOR debt resulted when his house was foreclosed in November 2007, and his second mortgage was not paid or resolved in the foreclosure sale. (Tr. 34, 54; SOR ¶ 4.f) Applicant planned to start paying on this debt as soon as he had paid off another non-SOR debt. (Tr. 34)

Applicant said he was contesting the debt in SOR ¶ 4.g for \$893 because he did not have an account with the creditor. (Tr. 55) He did not provide a copy of the dispute documentation.

Applicant was underwater with respect to his budget. (Tr. 35-51; GE 4) His income was exceeded by his deductions and expenses by about \$200. (Tr. 35-51) He is current on his monthly child support of \$400. (Tr. 19) He received financial counseling from his pastor in 2007 or 2008. (Tr. 38) He noted that a custody battle from June 2010 to 2011 was an exceptional expenditure. (Tr. 38) His spouse is not employed outside their home. (Tr. 37) Applicant summarized his efforts to establish his financial responsibility as follows:

And as far as finances I know on paper it looks bad and stuff and I am moving forward to try to take care of that, but it is due to periods of unemployment, my wife being unemployed and having to support my son. And it's been difficult. The negative amount that he referred to was offset by student loans⁷ and borrowing money from family and stuff so that I would be able to finish school and everything.

* * *

I know I've incurred a lot of debt that has not been paid, but that's one reason I've gone back to school to further my education to where I can be, -- to get a better job, better pay, where I might be able to pay all my debts and provide for my family and stuff better. And through the last twelve years and stuff despite the restrictions that have been placed on me by the Government, sexual registrations and stuff, I've been able to stay in the workplace and everything, and perceived to be a productive citizen. I just want to be able to do my job and have a little success and satisfaction for myself and my family. And I just pray that you will take all of that into consideration as you go over the evidence.

(Tr. 51, 61)

Character Evidence

Applicant provided character statements from a retired command sergeant major, his pastor, a friend, a retired lieutenant colonel, a coworker, his brother (a police officer), his father, and his spouse. (AE A-H) They lauded his hard work, professionalism,

⁷Applicant borrowed about \$25,000 to \$30,000 in student loans; however, he was not required to make any payments because his student loans were in deferment status. (Tr. 56)

reliability, responsibility, positive personality, trustworthiness, and religious faith. *Id.* Their statements support approval of his access to classified information. *Id.* They did not believe that he would sexually abuse any more children.

None of the character statements indicate he has taken full responsibility for his role in engaging in sexual contact with a 15-year-old child. For example, his spouse indicates:

I am well aware of the incident that occurred in 1999, however I know that he was inexperienced and naïve at that time of his life. He was easily deceived and should have used better judgment, but he was not the instigator and did not use aggression towards the person involved. I know from my personal experience with him during this time that he had just begun having intimate relationships and was easily flattered when someone showed interest in him.

(AE H) Applicant's pastor has known him since 2003. (AE B) Applicant's pastor stated:

When [Applicant] began attending our church he fully disclosed his past criminal record and I was even able to discuss him with his parole officer. I am fully convinced the only reason [Applicant] was ever entangled in the unfortunate situation causing his record was twofold:

- a. His youth and lack of judgment and
- b. Deception on the part of the young lady involved.

(AE B)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An

administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

The relevant security concerns are under Guidelines J (criminal conduct), D (sexual behavior), E (personal conduct), and F (financial considerations).

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

nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.”

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying in this case:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

AGs ¶¶ 31(a) and 31(c) apply because Applicant sexually abused a 15-year-old child when he engaged in sexual intercourse and sodomy with her in 1999. Under military law, these offenses are serious, as the maximum sentence under military law includes a total of confinement for 35 years under Articles 120 and 125, UCMJ.⁸ He pleaded guilty to both offenses. He was sentenced to a reprimand, to be reduced from E-4 to E-1, to forfeit \$335 pay per month for six months, and to be confined for six months. Applicant also committed two felonies in 2005 when he failed to register as a sex offender and failed to report to state authorities, as required under state law.

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

- (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.

None of the mitigating conditions fully apply. AG ¶¶ 32(b) and 32(c) do not apply because Applicant admitted and pleaded guilty to the four offenses, and no one pressured him into committing the offenses. AG ¶ 32(a) cannot be fully applied. As time passes without additional sexual offenses, the risk of recurrence correspondingly

⁸The *MCM, 1994*, paragraph 45e(2), provides the maximum punishment for carnal knowledge is a dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years. The *MCM, 1994*, paragraph 51e(2) states that the maximum punishment for sodomy with a child under the age of 16 years is a dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years. In 1999, the jurisdictional punishment limits of a special court-martial are a bad-conduct discharge, forfeiture of two-thirds pay, and confinement for six months. See R.C.M. 201(f)(2)(B).

decreases. At this time, there is still a small possibility of recurrence of a sexual or other criminal offense (which is one of the reasons the court requires registration of offenders who sexually abuse children). The behavior no longer serves as a basis for coercion, exploitation, or duress because the offense is a matter of record and is easily discovered through a search of the Internet. AG ¶ 32(d) is also partially applicable because there is evidence of successful rehabilitation. His offenses ended in 2005 and criminal conduct has not recurred. He expressed remorse, has a history of successful employment, and has never violated security rules or abused illegal drugs. He understands his criminal offenses had a negative impact on his lifestyle, family, and career. He accepted some responsibility and culpability for his offenses by pleading guilty and by disclosing his convictions to family, friends, and others. His demonstrated intent not to commit future crimes is encompassed in the partial application of AG ¶¶ 32(a) and 32(d).

Notwithstanding these positive attributes, more progress is necessary to assure Applicant has the improved reliability, trustworthiness, and good judgment necessary to safeguard classified information. When he was sexually abusing a 15-year-old child, he had time to recognize that what he was doing was wrong and damaging to himself and the child.

I do not accept Applicant's claim as true that he was actually registered as a sexual offender, the police lost his documentation, and he failed to retain a copy of his registration documentation. This claim is inconsistent with his guilty plea and is not credible. His statement at his hearing shows that he refuses to accept responsibility for this offense. His criminal conduct concerns are not fully mitigated under Guideline J.

Sexual behavior

AG ¶ 12 describes the concern about sexual behavior stating:

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

AG ¶ 13 provides four conditions relating to sexual behavior that could raise a security concern and may be disqualifying:

- (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.

The sexual conduct at issue is described under the criminal conduct guideline, *supra*. AG ¶ 13(a) applies. Although Applicant's sexual behavior was in private, he showed an exceptional lack of judgment and discretion. AG ¶ 13(d) applies. He committed one sexual offense in 1999, and there is no pattern of sexual misconduct. AG ¶ 13(b) does not apply. He is not vulnerable to coercion because his spouse, family members, police, courts, and his employer are aware of his offense. AG ¶ 13(c) does not apply.

AG ¶ 14 lists four conditions that could mitigate security concerns:

(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 committed the sexual offenses when he was 22 years old, and AG ¶ 14(a) does not apply because Applicant was not an adolescent when he committed the sexual crimes. In regard to the issue of whether the sexual offenses were recent or infrequent, they occurred in 1999 on one occasion. Applicant contends the offenses are unlikely to recur. There is a small possibility of recurrence, and AG ¶ 14(b) can only be partially applied. As indicated previously, the behavior no longer serves as a basis for coercion, exploitation, or duress and AG ¶ 14(c) applies. Applicant sexually abused a 15-year-old child, and she could not legally consent to the sexual activity. Therefore, AG ¶ 14(d) does not apply. AG ¶ 14(b) mirrors AG ¶ 32(a), *supra*, and the same discussion is applicable, resulting in partial mitigation.

In sum, AG ¶ 14(c) is applicable. Moreover, the sexual behavior concerns are thoroughly discussed under Guideline J, and Guideline J discusses an additional criminal offense (his failure to register and report as a sex offender). I conclude that the Guideline D concerns are mitigated as a duplication of the concerns under Guideline J.

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 three conditions that could raise a security concern and may be disqualifying in this case:

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

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior . . . ; and (3) a pattern of dishonesty or rule violations . . . ; and

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

AG ¶¶ 16(c) and 16(d) do not apply. As indicated under the criminal conduct guideline, there is credible adverse information that is sufficient for an adverse determination under Guideline J. However, AG ¶ 16(e)(1) applies because sexual abuse of a child and failure to register and report as a sexual offender creates a vulnerability to exploitation, manipulation, or duress, and such conduct adversely affects Applicant's professional standing as an employee of a Department of Defense

contractor. There is substantial evidence of this disqualifying condition, and further inquiry about the applicability of mitigating conditions is required.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

(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) and 17(b) do not apply because Applicant disclosed his criminal convictions, and 17(f) does not apply because Applicant admitted his criminal offenses. He fully disclosed his criminal offenses, and he is a registered sexual offender. His decision to end his sexual abuse of children is a positive step that tends to reduce or eliminate his vulnerability to exploitation, or duress. I do not believe that anyone could use Applicant's history of sexual abuse of children or conviction for failure to report and register as a sexual offender to coerce him into compromising classified information.

AG ¶ 15 indicates that poor judgment can cause reliability and trustworthiness concerns, resulting in disqualification under the personal conduct guideline. Judgment

issues under the personal conduct guideline are more specifically addressed in this case under the criminal conduct guideline. I find for Applicant under Guideline E because those judgment issues are a duplication of the judgment concerns previously discussed under Guideline J.

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in his SF-86, credit reports, OPM interview, SOR response, and hearing. Applicant's SOR alleges 14 delinquent debts totaling over \$38,000. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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 conduct in resolving his debts warrants limited application of AG ¶¶ 20(b), 20(c), and 20(d).⁹ Applicant's financial situation was damaged because his spouse was not employed outside their home and by Applicant's unemployment. His custody battle from June 2010 to 2011 was an exceptional expenditure. However, Applicant did not establish that he acted responsibly under the circumstances. He did not provide evidence of his progress resolving his delinquent SOR debts after he obtained employment in June 2010 or the amounts of funds spent on his custody battle. Applicant said he did not pay any of his SOR creditors anything.

The following five SOR debts were not on his March 8, 2012 credit report: SOR ¶ 4.d(2) for \$761; SOR ¶ 4.e for \$403; SOR ¶ 4.i for \$281; SOR ¶ 4.j for \$175; and SOR ¶ 4.l for \$553. Those five debts may be in the process of being transferred to another collection company, or they could have been dropped off of his credit reports because they are stale. I conclude that there is currently insufficient evidence to establish the existence of those five debts, and they are mitigated.

Applicant is credited with financial counseling through his generation of a budget and receipt of advice from his pastor. He showed some good faith when he admitted responsibility for his SOR debts in his SOR response, and he accepted responsibility for some of his SOR debts at his hearing and on his SF-86. He has not provided sufficient information about efforts to start paying his SOR creditors to fully establish any mitigating conditions for all of his SOR debts.

⁹The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Although Applicant said he did not accept responsibility for several debts, he did not provide documentary evidence that he disputed any debts or any entries on his credit report, and AG ¶ 20(e) does not apply. He maintained contact with some of his SOR creditors, and he attempted to negotiate some payment plans;¹⁰ nevertheless, there are no receipts or account statements from creditors, establishing any payments to the SOR creditors. He did not establish a sufficient track record of debt payments in this case. There is insufficient evidence that his financial problem is being resolved and is under control. I am not convinced that he will resolve his delinquent SOR debts in the near future, and financial considerations are not mitigated under Guideline F.

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 have incorporated my comments under Guidelines J, D, E, and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There is some evidence supporting approval of Applicant's clearance. Applicant is a 34-year-old voice systems technician, who has been employed by a defense contractor since June 2010. In 2011, he was awarded an associate's degree, and he has started his working on his bachelor's degree. He served in the Air Force from 1995 to 2000, and he received a general discharge under honorable conditions. He has consistently described his history of criminal convictions in his SF-86, OPM PSI, SOR response, and at his hearing. His admission at his hearing that he knew the child-

¹⁰“Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

victim's age when he engaged in sexual activity with her is a positive reflection on his credibility. See n. 6, *supra*. He knows the consequences of criminal offenses. Applicant has contributed to the Department of Defense. Applicant provided eight character statements, which praised him for his hard work, professionalism, reliability, responsibility, positive personality, trustworthiness, and religious faith. Those statements support approval of his access to classified information, and opined that he would not sexually abuse any more children. There is no evidence of disloyalty or that he would intentionally violate national security. Unemployment and a custody battle adversely affected his finances. His character statements and good work performance show some responsibility, rehabilitation and mitigation.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant engaged in sexual intercourse and sodomy with a 15-year-old child in 1999, and he was convicted of failing to register as sexual offender in 2005. He has an ongoing responsibility to register as a sexual offender. I do not accept his statement as accurate that he actually registered as required, the police lost his registration paperwork, and he failed to retain his own copy. The findings of the court that he is guilty of the two felony-level offenses in 2005 are more credible than his claim of being factually innocent of these offenses. He is sufficiently mature to be fully responsible for his conduct. He has a history of failing to pay his debts as agreed, and he failed to make sufficient progress resolving nine debts totaling more than \$35,000. His offenses and failure to pay his creditors show lack of judgment, and raise questions about Applicant's reliability, trustworthiness and ability to protect classified information. His conduct under such circumstances raises a serious security concern, and a security clearance is not warranted.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude criminal conduct and financial considerations concerns are not mitigated; however, sexual behavior and personal conduct concerns are mitigated. For the reasons stated, I conclude he is not eligible for access to classified information.

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, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline D:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT
Subparagraphs 4.a to 4.d(1):	Against Applicant
Subparagraphs 4.d(2) and 4.e:	For Applicant
Subparagraphs 4.f to 4.h:	Against Applicant
Subparagraphs 4.i and 4.j:	For Applicant
Subparagraph 4.k:	Against Applicant
Subparagraph 4.l:	For Applicant
Subparagraph 4.m:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge