



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



In the matter of:

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ISCR Case No. 11-03294

Applicant for Security Clearance

Appearances

For Government: Raashid Williams, Esq., Department Counsel

For Applicant: *Pro se*

07/27/2012

Decision

LYNCH, Noreen, A., Administrative Judge:

The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations), Guideline D (Sexual Behavior), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct). The SOR was dated February 13, 2012. 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 (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on May 18, 2012. DOHA issued a notice of hearing on May 29, 2012, scheduling the hearing for June 15, 2012. Government Exhibits (GX) 1-9 were admitted into evidence, without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-H, which were admitted without objection. I kept the record open until June 29, 2012 for additional documents. Applicant timely submitted documentation, which was marked as AX I-K. DOHA received the

transcript (Tr.) on June 25, 2012. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted two factual allegations under Guideline F (Financial Considerations), and the allegations under Guideline D (Sexual Behavior). Applicant denied the allegation under Guideline J (Criminal Conduct), and under Guideline E (Personal Conduct).

Applicant is a 42-year-old employee of a defense contractor who works as a risk manager. He received a Master's degree in December 1993. He is married and has three children. Applicant has worked for his current employer since April 2008. He has held a security clearance since 2004. (GE 1)

Financial Considerations

Applicant and his wife bought a home in 2000. They lived in that home until 2006. In July 2006, before selling the home they lived in, Applicant and his wife purchased a larger home for approximately \$500,000 in another state. Applicant does not believe he made a down payment. He noted that the mortgage payment was probably too high for their income. (Tr. 107) They were not successful in selling the first home. They dropped the price several times, but the house did not sell. They did not attempt to rent the home. Eventually, the home went to short sale. Applicant lost his job in February 2007.¹ As a result of living beyond his means and a high monthly mortgage, Appellant could not maintain his mortgage. (Tr. 134) He wanted to keep his home. He was the sole provider for his family. He was unsuccessful in getting a loan modification. (Tr. 120) Applicant had approximately \$15,000 or \$20,000 in credit card debt. (Tr. 127) He decided to file for Chapter 13 bankruptcy in March 2007. (SOR 1.e) The wage-earner plan monthly payments of \$750 were made successfully. The petition was discharged in April 2012 (AE D) The collection accounts include an electric bill (SOR 1.a) in the amount of \$148, which was paid in June 2012. (AE I) A gas bill (SOR 1.c) in the amount of \$427 was paid. (AE B) The past-due mortgage accounts are closed. (AE D) They were included in the Chapter 13 bankruptcy petition.

Applicant admits that on his salary of approximately \$100,000, he could barely afford his monthly mortgage payments. He does not recall the amount of the mortgage payment or the interest rate. He also acknowledged that he did not have a household budget at the time or seek any financial counseling until the bankruptcy. (Tr. 198) He acknowledged that he was "house poor." He depleted his savings by trying to maintain the first home. Applicant believes that his financial problems are in the past. He has resolved the issues noted in the SOR. The home he purchased in 2006 went to foreclosure. He did not have a deficiency judgment on the first home, because the bank forgave the difference. He has no outstanding financial issues. He has had a steady

¹Applicant stated the unemployment lasted two months. During that time he worked two lower-paying jobs.

income since April 2008. His current income is about \$125,000. After rent and other expenses, he has a monthly net remainder of \$2,181. (GE 7) He and his wife follow a household budget. They are saving money.

Sexual Behavior

Child Protective Services (CPS) received a complaint, filed on November 17, 2009, alleging that Applicant had sexually abused a female child in his house for several years. The girl, who was in elementary school, and a friend of Applicant's daughter, reported a long history of sexual abuse that culminated in her being penetrated by Applicant's fingers. CPS found that Applicant had sexually abused the girl. The finding would have allowed CPS to put Applicant on a sex offender list for a number of years. (Tr. 73)

The CPS report noted that Applicant reported several incidents where he put himself in situations where sexual abuse could have occurred. The abuse was alleged to have occurred over 100 times in front of Applicant's daughter. The victim spent the night with Applicant's daughter about every other weekend. Applicant reported that he would sometimes go to the basement of the house when the girls were sleeping. Applicant stated that he would rub their backs and cuddle with them. He also stated that he never cuddled with them but rather on one occasion, he touched their eyes to keep them from watching a certain part of a movie. (Tr. 75) He did state that he rubbed his daughter's back but did not touch the victim. (Tr. 75)

Child Protective Services investigated the case and a detective from the county sheriff's office met with Applicant in December 2009 for about three hours. This resulted in a taped interview. Based on the taped interview and the investigation, CPS believed that Applicant's inconsistent statements regarding his touch, could reasonably be interpreted as highly suspicious given the gravity of the accusation. (Tr. 79) In an affidavit, Applicant states that he was accused of touching his daughter's friend on her breasts and her vagina. He was also accused of kissing her, while she was sleeping next to his daughter. (GE 4) Applicant and his wife were living in a single family home with their two other children.

Applicant appealed the finding of CPS to a hearing officer. The hearing officer, after a review of a written record, changed the finding to "unfounded" because of lack of evidence to substantiate a finding. (AE G) The hearing officer noted that at the appeal hearing, Applicant's wife stated that she had no knowledge of any sexual abuse nor did her daughter have any knowledge. Since no collateral witnesses were interviewed the preponderance of the evidence did not rise to the level that Applicant was more likely than not to have sexually abused the alleged victim. Thus it could not support a finding of sexual abuse by Applicant. The decision was rendered in October 2010. (AE G)

Applicant was arrested on or about December 31, 2009 and charged with Felony Aggravated Sexual Battery for a victim under 13 years of age, and Object Penetration for a victim under 13 years old.

Applicant denies that he ever sexually assaulted his daughter's girlfriend. He was adamant that he was falsely accused and falsely charged. The allegations stem from 2003 until 2006 when his daughter's friend visited Applicant's home frequently. Applicant's family, pastor, and employer are aware of the charges. He noted that he had a strong support group from his church.

Applicant believes that the accusations stem from the victim's jealousy of his daughter. He stated that the victim had a grudge against his daughter because she was popular. (Tr. 40) He states that when he was confronted with the allegations in December 2009, he was shocked. (Tr. 65) He maintains that there was never any evidence to prove such allegations. (Tr. 65) He stressed it was the "unfortunate lie of a very disturbed girl." (Tr. 66) He retained counsel and fought the CPS finding based on the fact that CPS did not interview his wife or daughter about the alleged charges. (Tr. 82) He also stated that later the alleged victim renewed a friendship with his daughter. (Tr. 143)

Criminal Conduct

Applicant was charged by a Grand Jury with seven felony counts of Aggravated Sexual Battery on a victim who was less than 13 years old. (GE 9) He was also charged with one felony count of Animate or Inanimate Object Penetration of a victim who was less than 13 years old. He spent eight days incarcerated. In July 2010, the charges were nolle prosequi. (AE E)

On February 4, 2011, Applicant filed for an Order of Expungement. (AE) He received confirmation of the Expungement on June 22, 2011. (AE F)

Personal Conduct

Applicant was terminated from his employment in 2000. At the personal appearance, he acknowledged that a subordinate of his from work was helping him move. She alleged that he made inappropriate sexual behavior or advances toward her. (Tr. 97) Applicant testified that it was a "he said, she said" issue and the employer believed the woman and let Applicant go. He stated that the allegations were not proven. He elaborated that nothing was ever written down. (Tr. 53) He has no other recollection of the incident.

In February 2007, Applicant was terminated from his employment due to misconduct. He used a work laptop computer at home to write stories and allowed his daughter to "run some web sites searches on his work laptop computer." He reported during his 2010 OPM investigation that he used the Internet for personal use during work hours. He admitted the misconduct. (Tr. 52) He also stated that he believed they had a policy which he understood prohibited such conduct. (Tr.95) Applicant did not list that he was terminated for misconduct on his SF-86. He noted that the contract ended. (Tr. 102) When asked by Department Counsel why he did not disclose the information, he stated that it was "simply oversight." Later when Department Counsel referred to his

2005 SF-86 non-disclosure, Applicant stated that he did not fully disclose all details. (Tr. 105)²

In January 2010, an incident report revealed that Applicant was missing from work in late December and early January. Applicant's contractor called the employer to investigate. Applicant stated that he was dealing with his daughter but did not elaborate. The contractor learned that Applicant was arrested for alleged child sexual abuse and was out on bond waiting for a trial. The incident report notes that the contractor specifically asked Applicant if there was any run-ins with the law, and he answered, no. (GE 8) Applicant denied that he did not report for work without asking for leave. This was during the time that he was arrested for the alleged sexual child abuse. He stated that he asked someone from work for personal leave and stated he was not sure when he would return. Applicant stated that since it was holiday time, management was not in the office, and he spoke to the assistant program director. Applicant stated that he sent an email to the entire management team. (Tr. 147) He could not produce that email, but did present an email from another person who vaguely remembered he had asked for some leave. (AE I) Applicant did not complete a leave slip and he was not sure if none existed in the small company. (Tr. 91) Applicant submitted a post-hearing submission of his time sheet for January 1 through January 10, which showed that he worked 68 hours instead of 88. (AE I)

Applicant did not say anything to anyone when he returned to work in early January because his attorney advised him not to. His attorney wanted Applicant to wait until they had a better understanding of the details of the case and his defense. Later, Applicant explained the situation to his employer and the contractor.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based

²The SOR does not allege that Applicant failed to disclose the reason for the termination on his SF-86. I did not consider his failure to disclose the incident to be an intentional attempt to deceive the Government. I have considered the non-SOR evidence related to the whole-person.

on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admits to filing Chapter 13 bankruptcy in 2007 due to living beyond his means and a high monthly mortgage that he could not maintain. He acknowledged that he had approximately \$15,000 to \$20,000 in credit card debt. He also acknowledged that it was probably a poor decision to buy the second home without having sold the first one. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), 19(c), and 19(e).

AG ¶ 20 provides conditions that could mitigate security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant admitted that he lived beyond his means. He had credit card debt of approximately \$15,000 or \$20,000. He was the only source of household income. He purchased a larger home in 2006 before he sold his first home. He could barely maintain his monthly mortgage for one year. He lost his job in 2007, but worked at part-time jobs for a few months before accepting his current employment. He filed for bankruptcy in 2007, so that he could keep his home. Applicant completed his wage-earner Chapter 13 bankruptcy in 2012. He acknowledged that he did not have financial counseling or follow a budget until the filing of the bankruptcy petition. Granted, the real estate market took a downward spiral, but Applicant did not act responsibly in choosing to purchase a more expensive house when he had not sold his first home. He has been gainfully employed since 2008, and has just addressed one of his collection accounts for \$148 recently. However, he has now resolved and addressed the delinquencies in the SOR. I find that Applicant's financial considerations concerns are mitigated under AG ¶¶ 19(c) and 19(d).

Guideline D, Sexual Behavior

AG ¶ 12 expresses the security concern as:

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:

- (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.

In 2009, CPS received a complaint of child sexual abuse against Applicant. The initial investigation produced a finding of child sexual abuse. Applicant appealed the decision and a hearing officer overturned the finding and found that there was not a preponderance of evidence to support a finding that he committed the alleged child sexual abuse in the case. Applicant consistently denied that he had sexually assaulted the 13-year-old girlfriend of his daughter. The criminal charges were nolle prossed. Applicant filed for and received an Order of Expungement in 2011. None of the disqualifying conditions apply because the child sexual abuse offenses are not substantiated.

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:

- (a) a single serious crime or multiple lesser offenses;
- (b) discharge or dismissal from the Armed Forces under dishonorable conditions;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;
- (d) individual is currently on parole or probation; and
- (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

As indicated under Guideline D, none of the criminal offenses are substantiated. None of the disqualifying conditions apply.

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;
- (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

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

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and

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

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

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

(g) association with persons involved in criminal activity.

As discussed above, Applicant was arrested and charged with child sexual abuse in 2009. The CPS found insufficient evidence to uphold a finding. The criminal charges were nolle prossed and have been expunged. Applicant's work behavior has involved a pattern of dishonesty and rule violations. In 2000, he was terminated for misconduct involving inappropriate sexual behavior. He was terminated twice, the last in 2007. His behavior over the years has shown a lack of judgment, reliability and trustworthiness. In 2010, there was an issue of Applicant not informing his employer about the circumstances surrounding the child sexual abuse charges in 2009. He also lied when he told his employer that he had no run-ins with the law. AG ¶¶ 16(b), 16(d) and 16(e) apply. His conduct shows a pattern of poor judgment.

AG ¶ 17 provides conditions that could mitigate security concerns:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

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

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

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant denied any intentional wrongdoing on his part save for the improper use of his work laptop computer. He has two terminations and did not fully disclose the information concerning his reason for the 2007 termination for inappropriate use of the work computer on his SF-86. He has not presented any other information to persuade me that he has mitigated personal conduct concerns. I have doubts about his judgment, trustworthiness, and reliability. After considering the mitigating conditions outlined in AG ¶ 17, I conclude Applicant has not mitigated the security concern under personal conduct.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a 42-year-old professional who works as a risk manager. He has held a security clearance since approximately 2004. He is married and has three children. Applicant has been employed as a contractor for many years. However, he has been terminated on two occasions. He did not disclose the information to the government on his SF-86. He argues that his contract terminated in 2007, when in reality he was terminated for misconduct. He was also terminated in 2000 for misconduct. The choices he made over the years indicate lack of trustworthiness and judgment.

Applicant experienced some unemployment, but he lived beyond his means. He bought a more expensive house in another state before he sold the home he was living in. He did not budget or plan for the higher mortgage rate. Granted, he did not know that the house would not sell, but he also acknowledged that he was not financially capable of maintaining the high mortgage payment. He had credit debt and had to file for Chapter 13 bankruptcy. He did make his wage-earner payments and his debts were discharged in 2010 under Chapter 13 of the Bankruptcy Code. He is now more aware of the need for a budget and spending within limits. He and his wife are saving. However, he had a history of poor financial choices.

The 2000 termination involved an allegation of sexual advances to a work subordinate. This is twelve years ago, but Applicant did not accept responsibility for his conduct. He stated it was just - "he said - she said." He was less than candid about reporting this to the government. In 2009, a complaint of child sexual abuse was made against Applicant. The criminal charges were nolle prossed and an Order of Expungement issued in 2011. Applicant denied the behavior but did make inconsistent statements. He relied on the criminal dismissal of charges to prove that the allegations were false. The ultimate finding of the CPS hearing officer did not state that he was innocent, but rather that there was not a preponderance of evidence to support a finding. However, I find that he was credible in his denial of any child sexual abuse.

Given the totality of Applicant's history and work record, I have doubts about his reliability, good judgment, and trustworthiness. In 2007, Applicant was terminated for inappropriately using his work computer. He admitted this and acknowledged that he knew this was against the company policy. As late as 2010, there is an issue of reporting a leave of absence. In 2010, he lied when asked about any run-ins with law enforcement. Granted, he has worked for his current employer with no known incidents.

At this point, I have doubts about his judgment and reliability. Any doubts must be resolved in favor of the Government. Applicant has not met his burden in this case. He has not mitigated the security concerns under personal conduct. Clearance is denied.

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 F:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant
Paragraph 2, Guideline D:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraphs 4.a:	For Applicant
Subparagraphs 4.b:-d:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge

