



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



In the matter of: )  
)  
) ISCR Case No. 15-07170  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: William F. Savarino, Esq.

11/18/2016

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is insufficient to mitigate the sexual behavior, criminal conduct, and personal conduct security concerns. He mitigated the Guideline B security concerns. Clearance is denied.

**Statement of the Case**

Applicant submitted his most recent security clearance application (SCA) on October 4, 2014. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant a clearance. On October 27, 2015, the DOD Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guidelines D (sexual behavior), B (foreign influence), J (criminal conduct), and E (personal conduct).<sup>1</sup> Applicant answered the SOR on

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<sup>1</sup> DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

November 20, 2015, and requested a decision based on the written record. On January 15, 2016, the Government requested a hearing before an administrative judge. (Hearing Exhibit (HE) 1) The case was assigned to me on April 13, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 27, 2016, scheduling a hearing for May 16, 2016.

At the hearing, the Government offered 10 exhibits (GE 1 through 10). GE 10 is the Government's discovery letter to Applicant that was marked and made part of the record, but it will not be considered evidence. Applicant testified, and submitted two exhibits (AE) 1 and 2. All exhibits were made part of the record without objections. DOHA received the hearing transcript (Tr.) on May 25, 2016.

### **Findings of Fact**

Applicant admitted the factual allegations in SOR ¶¶ 2.a through 2.c, 3.a, 3.b, and 4.a through 4.e. He denied the allegations under SOR ¶¶ 1.a, 2.d, 3.c, and 4.d. His SOR and hearing admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 28-year-old employee of a defense contractor. He graduated from college in 2010, at age 21, and received a bachelor of science degree. Shortly thereafter, he was hired by a defense contractor. In June 2011, Applicant requested eligibility for access to classified information, required for his position, and was granted a top secret level clearance. According to Applicant, he has possessed his top secret clearance from 2011 to present. Applicant married his wife in 2013, and as of the hearing day, they were expecting their first child. There is no evidence of any security violations or issues of security concern, except for those alleged in the SOR.

Applicant met (M), a Brazilian citizen and resident, while both were in college in the United States, but studying abroad. They lived in the same building during four months while studying abroad and became close friends. Applicant visited M in Brazil in 2010 after college and in 2015 with his wife. They have continued their close friendship to present, and communicate in a frequent basis. M's father, grandfather, and aunt hold or held important positions at the highest levels within the Brazilian government. (Tr. 27-36)

While in college, Applicant was prescribed Adderall to help him deal with anxiety and maintain his focus while studying and taking tests. In October 2009, at age 20, Applicant sold two Adderall to one of his fraternity brothers who was a frequent user of illegal drugs. (Tr. 102) He claimed that, at the time, he did not realize he was doing something wrong, but averred he has never again given prescription medications to anyone. He also claimed he has never used marijuana. Applicant did not disclose in his 2011 SCA, or in his subsequent background interview, that he sold Adderall to his fraternity brother in October 2009. He claimed he forgot about it and made an innocent mistake.

In December 2009, one of Applicant's fraternity brothers was driving while intoxicated (DWI), failed to use a turn signal, and drove on a sidewalk. He then drove to the fraternity house followed by police officers. He knew that if he was arrested he would be charged with DWI and asked Applicant to take the blame for him. Applicant lied to the police officers to protect his friend. He told the police officers that he was driving the car they followed to the fraternity house. Applicant was issued citations for not using his turn signal and driving on the sidewalk, for which he paid some fines.

In 2013, Applicant requested an upgrade of his clearance level to work in contracts with another Government agency (Agency). He was required to participate on a lifestyle polygraph-assisted interview. Prior to the interview, Applicant asked people for advice because he was nervous. He asked for strategies to help calm himself down and make sure he did not come across as lying. (Tr. 114) During the interview, he was asked whether he had ever done something for which he could have been arrested. Applicant disclosed for the first time that he had sold the Adderall to a fraternity brother in 2009, his false statement to police officers to cover for his fraternity brother's DUI in 2009, and that in 2011 he drove under the influence of alcohol.

Additionally, Applicant disclosed that between 2007 and 2011, he downloaded child pornography from a file sharing database. According to the Agency's documents, Applicant told the Agency's polygraph interviewer that a friend showed him child pornography videos he had in his computer. After seeing them, Applicant started searching an online database for similar videos. He told the Agency interviewer that he did not remember the specific search terms he used, but assumed they would have been similar to "girls," as well as stating specific ages, such as 13. (GE 9)

He stated that the videos featured naked females ages 12-17, who were not always engaging in sexual acts. According to the summary of the interview, he described the younger range, closer to 12 years old, as females who were not developed and appearing to be prepubescent. The older range, closer to 17 years old, were developed but appeared to be younger and the title of the video stated their age. He downloaded child pornography sporadically, masturbated watching the videos, and then immediately deleted them. He stated that no one knew about it, and that he had no intention of ever doing it in the future. As a result of Applicant's statements, the Agency denied his request for an upgrade of his clearance level in February 2014. (GE 9)

In his answer to the SOR Applicant stated:

. . . . during the polygraph exam, I misspoke and embellished my answer involving the downloading of child pornography as I felt the only way to pass the exam was to say anything that came to my head whether it was the truth or not . . . . I unfortunately convinced myself I had downloaded child porn even though I have never knowingly downloaded any . . . . I did download pornography and did masturbate to it but I believe all persons involved were of age. I have downloaded nothing since college and have no intention of ever doing so again. Last year I was investigated by the

state police per the results of the polygraph exam and my computer was searched by the investigator. There was no child pornography found and no charges were filed.

At hearing, Applicant testified it was possible he had downloaded child pornography – occasionally he would download pictures and movies with girls that appear to be too young and he did not like it. He averred he immediately deleted those files. Applicant claimed he did not recall discussing any girl age ranges with the polygraph interviewer, or having a clear sense of the ages of any of the participants in the videos. (Tr. 108) Applicant testified that it was very difficult for him to remember anything that he said or happened during the interview because he did not want to remember anything that happened during the interview. (Tr. 110) He admitted to searching and downloading pornographic material, but denied ever searching out for anything that would illicit child pornography, or knowingly downloading child pornography. He reiterated that occasionally he downloaded material he was not comfortable with because the girls appeared to be underage, but claimed he deleted it. (Tr. 111)

Applicant explained at the hearing, that the Agency interviewer made him feel as if he had done something bad, that he had downloaded child pornography. Applicant testified that he felt compelled to go along with the interviewer's opinions because if he didn't, he would look poorly at the end of the polygraph exam and he feared his clearance would be denied. (Tr. 88)

Following the denial of Applicant's clearance upgrade, the Agency filed a JPAS incident report documenting the denial. Applicant was required to submit an updated security clearance application (SCA) in March 2014. Government investigators attempted to interview Applicant concerning the reasons for the denial of his clearance upgrade in September 11, 18, 24, and 29 of 2014. Applicant refused to speak with the Government investigators, and claimed he did not know the reason for his clearance denial with regard to sexual behavior. He was made aware that his refusal to answer questions would be considered as him refusing to cooperate with the clearance investigation, and that his refusal would be grounds to deny his request for a clearance. Applicant refused to discuss or to answer any questions until he was issued the SOR.

Applicant testified that he knew the Agency denied his clearance upgrade because of his child pornography related behavior. (Tr. 95) He explained he did not want to discuss this issue with government investigators because after the polygraph assisted interviews, the Agency notified the state police who then opened an investigation against Applicant, visited his home, and searched his computer. Applicant claimed the incident placed undue hardship on him and his wife, and he did not want his wife to go through the process again, even if that meant he was going to lose his clearance and his job. Applicant decided to put his family first. (Tr. 112) Applicant did not inform his employer about the complete extent of the SOR allegations.

Applicant is considered to be an excellent husband. His friends and supervisors consider him to be extremely honest, hardworking, and dependable.

## **Policies**

Eligibility for access to classified information may be granted “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. 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).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

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

AG ¶ 12 describes the concern about sexual behavior:

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 provides four disqualifying conditions relating to sexual behavior that apply to this case, 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.

Between 2007 and 2011, Applicant searched for, downloaded, and masturbated to child pornography. Applicant's sexual behavior exposed him to criminal charges; made him vulnerable to possible coercion, exploitation, and duress; and reflected lack of judgment and discretion. AG ¶¶ 13(a), (b), and (c) apply.

AG ¶ 14 lists conditions that could mitigate the sexual behavior 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's sexual behavior was frequent, occurred during an extended period, and it still cast serious doubts on his current reliability, trustworthiness, and good judgment. Furthermore, it could still serve as a basis for coercion, exploitation or duress. It is not clear whether Applicant disclosed the extent of the child pornography allegations to his wife and employer.

Considering the evidence as a whole, and in light of Applicant's conflicting statements, his denials to searching for, downloading, and masturbating to child pornography are not credible. Applicant claimed that the Agency interviewer somehow forced him to admit things he did not do (search for, download, and masturbate to child pornography) and that her investigation report was not accurate. Notwithstanding, Applicant stated in his answer to the SOR, and testified at his hearing, that during the polygraph-assisted interview he misspoke and embellished his answers involving the downloading of child pornography as he felt the only way to pass the exam was to say anything that came to his head whether it was the truth or not. He even claimed that during the interview, he convinced himself that he had downloaded child pornography even though he had never knowingly downloaded any.

Applicant admitted that he searched for pornography and masturbated to it. He also admitted that he occasionally downloaded what he believed was child pornography, albeit not intentionally, and claimed he immediately deleted it. In light of all the evidence, Applicant's claims of innocence are not credible. I find it difficult to believe that Applicant would make such damaging admissions against his criminal interest just to pass a polygraph-assisted interview. Moreover, he admitted that he "misspoke and embellished" his statements about downloading child pornography, and then claimed the interviewer somehow did something wrong when she reflected his statements in the investigation report. I find that Applicant disclosed the details of his criminal sexual habits to the interviewer and she reflected them on the investigation report. Ultimately, either he lied during the polygraph-assisted interview or he has been lying since. In either case, Applicant's evidence is insufficient to mitigate the sexual behavior security concerns. I have serious doubts about Applicant's trustworthiness, reliability, and good judgment.

## **Guideline B, Foreign Influence**

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign

country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline indicates conditions that could raise a security concern and may be disqualifying AG ¶ 7 in this case:

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

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

Applicant met (M), a Brazilian citizen and resident, while both were attending college in the United States, but studying abroad. They lived in the same building during four months while studying abroad and became close friends. Applicant visited his Brazilian friend in 2010 after college and in 2015 with his wife. They have continued their close friendship to present and communicate on a frequent basis. M's father, grandfather, and aunt hold or held important positions at the highest levels within the Brazilian government.

The mere possession of close ties of affection or obligation with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one person with close ties lives in a foreign country and an applicant has contacts with that relative, this factor alone may be sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.<sup>2</sup>

Applicant has frequent contacts and a close relationship of affection and obligation with M and family in Brazil. These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Brazilian agents or individuals operating in Brazil may exploit the opportunity to obtain sensitive or classified information about the United States. Applicant's friends in Brazil create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly or through his family members in Brazil.

The Government produced substantial evidence raising potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the

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<sup>2</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).



Government. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns including:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and
- (f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The United States and Brazil traditionally have enjoyed robust political and economic relations. They have a long history of deepening people-to-people ties through exchanges in education, energy, health, science and technology, and innovation. There is no evidence to show that Brazil has engaged in economic or industrial espionage against the United States, or other security concerns. (U.S. Department of State, Fact Sheet: *U.S. Relations With Brazil*, July 29, 2015)

Applicant has a close personal relationship (friendship) with a college roommate from Brazil (M). Applicant has frequent contact with M via social media and telephone contact. He visited M and his family in Brazil in 2010 and 2015. Applicant's Brazilian friend's family hold or have held important positions at the highest levels within the Brazilian government. Notwithstanding, considering the U.S.-Brazil relations, how the

friendship developed, and their contacts and relationship after college, I do not find that Applicant's friendship with M creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. I further find that AG ¶ 8(a) and (b) apply and mitigate the security concerns.

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

Under Guideline J, the concern is that 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 ¶ 30.

The SOR alleged and Applicant admitted that in October 2009, he sold two Adderall pills to a fraternity brother. He claimed that before or after this incident he never sold any drugs to anyone else. In December 2009, to cover for a fraternity brother who was driving while intoxicated, Applicant made false statements to police officers taking responsibility for driving on a sidewalk and not using a turn signal. He was issued citations and paid a fine.

The SOR also cross-alleged as a criminal conduct security concern that between 2007 and 2011, Applicant searched for, downloaded, and masturbated to child pornography. (SOR ¶ 1.a) For the same reasons discussed under the sexual behavior guideline, incorporated herein, I find that Applicant's sexual behavior exposed him to criminal charges; made him vulnerable to possible coercion, exploitation, and duress; reflected a lack of judgment, reliability, and trustworthiness; and showed an inability or unwillingness to comply with the law.

Applicant's criminal behavior raises security concerns under AG ¶ 31(a) "a single serious crime or multiple lesser offenses," and AG ¶ 31(c) "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

AG ¶ 32 lists two conditions that could mitigate the criminal conduct security concerns raised under AG ¶ 31:

(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; 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.

For the same reasons stated under the sexual behavior guideline, incorporated herein, I find that AG ¶ 32(a) and (d) apply in part, but do not fully mitigate the criminal conduct security concerns.

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

AG ¶ 15 articulates the security concern for 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.

Under this guideline, the SOR cross-alleged that Applicant: illegally sold Adderall (SOR ¶ 3.a); lied to police officers to cover for a fraternity brother who drove while intoxicated (SOR ¶ 3.b); and between 2007 and 2011, Applicant searched for, downloaded, and masturbated to child pornography. (SOR ¶ 1.a) These allegations have been previously discussed under the sexual behavior and criminal conduct guidelines. For the sake of brevity, my findings, discussions, and conclusions under the above guidelines are incorporated herein.

Additionally, the SOR alleged that in 2014, the Agency denied Applicant an upgrade of his clearance because of improper criminal and sexual behavior (based on the security concerns set forth in the above paragraph); that Applicant refused to cooperate with government investigators on September 11, 18, 24, and 29 of 2014, who were performing background interviews; and that Applicant falsified his June 2011 SCA when he answered "no" to the question of whether he had illegally sold drugs, and deliberately failed to disclose that in 2009 he sold Adderall to a fraternity brother.

Applicant admitted the denial of his clearance upgrade by the Agency in 2014. He explained that he refused to cooperate in the security background investigation because he wanted to protect his family (wife) from the stress of another sexual allegation investigation, even if that meant losing his clearance and his job. Concerning his failure to disclose that he sold Adderall in 2009, Applicant claimed that he made an honest mistake – that he had just forgotten about it. Considering the evidence as a whole, Applicant's claims of innocent mistake are not credible.

Applicant's behavior triggers the applicability the following disqualifying condition under AG ¶ 15:

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

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It also triggers the applicability the following disqualifying conditions under AG ¶

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigation, determine employment qualifications, award benefit status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibility; 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 . . . .

AG ¶ 17 lists six conditions that could potentially mitigate the personal conduct 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; and

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

Considering the evidence as a whole, including Applicant's age, education, experience working for a government contractor while possessing a clearance, the

circumstances surrounding the offenses, the seriousness of the sexual behavior offenses, and his lack of credibility, I find that Applicant's evidence is insufficient to mitigate the Guideline E security concerns. Applicant's conflicting testimony, in light of the evidence as a whole, is not credible and diminishes the probative value of his explanations and otherwise favorable or mitigating evidence.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines D, B, J, and E in my whole-person analysis.

Applicant receives credit for his years working for a defense contractor. He is considered to be an excellent husband and father. His friends and supervisors consider Applicant to be extremely honest, hardworking, and dependable. Notwithstanding, he failed to mitigate the Guidelines D, J, and E security concerns. He mitigated the Guideline B concerns.

### **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 D:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a-2.d:	For Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraphs 3.a-3.c:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraphs 4.a-4.e:	Against Applicant

### **Conclusion**

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

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JUAN J. RIVERA  
Administrative Judge