DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 16-02652
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Robert B. Blazewick, Esq., Department Counsel
For Applicant: Peter G. Irot, Esq.

01/19/2018

Decision

MURPHY, Braden M., Administrative Judge:

Applicant mitigated the security concerns under Guideline E, personal conduct, and the related cross-allegations under Guideline F, financial considerations. He acknowledged his wrongdoing and showed significant changed circumstances since the events at issue. His security-significant behavior is unlikely to recur. He established that it is clearly consistent with the interests of national security that he be granted access to classified information. Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) in February 2015, in connection with his employment in the defense industry. (GE 1) On February 17, 2017, following a background investigation, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, personal conduct, and Guideline J,

criminal conduct. Some of the Guideline E concerns were also cross-alleged under Guideline F, financial considerations.[1]

Applicant answered the SOR on March 8, 2017, and requested a hearing. The case was assigned to me on May 12, 2017. On October 27, 2017, a Notice of Hearing was issued scheduling the hearing for November 17, 2017. The hearing convened as scheduled. At the hearing, Department Counsel submitted Government's Exhibits (GE) 1 through 3. Applicant appeared with counsel. A document attached to the answer was marked as Applicant's Exhibit (AE) A. All exhibits were admitted without objection. Applicant and five other witnesses testified.

On December 10, 2016, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG). The new AGs became effective on June 8, 2017, for all adjudicative decisions on or after that date.[2] Any changes resulting from the implementation of the new AGs did not affect my decision in this case.

Amendments to the SOR

At the start of the hearing, the Government moved to withdraw the Guideline J allegation (SOR ¶ 2.a). The Government later moved to withdraw the reference to SOR ¶ 1.d, as cross-alleged under SOR ¶ 3.a. The motions were granted without objection. (Tr. 12, 205-206)

Findings of Fact

In his answer, Applicant admitted all the allegations, with explanations. His admissions and explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 41 years old. He and his wife have been married for 20 years. They have two children, ages 7 and 12. Applicant works for a defense contractor providing audio-visual production services for the U.S. Army. He has worked in his current position since February 2015. This is his first application for a security clearance. (Tr. 11-12, 22-23, 92, 109; GE 1; AE A)

Applicant attended college and graduate school at a large state university ("University"). He earned a bachelor's degree in 1998 and a master's degree in 2006.

[1] The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD on September 1, 2006.

[2] Applicant's counsel confirmed that he received the new AGs before the hearing. (Transcript (Tr.) 7).

While in college, he worked as a scholarship student in the video office of the University's athletic department. After graduating, he was hired as a full-time employee, and he remained there until he resigned in April 2014. By the time he left, he led the athletic department's video and broadcast office. (Tr. 23-25, 33; GE 1, 2, 3)

The SOR alleged that in November 2012, Applicant received a written reprimand from the University for inappropriate behavior in the workplace (SOR ¶ 1.h) and was counseled for having inappropriate boundary issues with students, including females, and for abusing his authority over subordinates. (SOR ¶ 1.i) These allegations relate to an investigation for possible violation of University sexual harassment and workplace policies.

In fall 2012, Applicant and other video office employees travelled, on University business, to another city for a football game. While at local bars with fellow employees, Applicant purchased alcoholic drinks for a female student to celebrate her 21st birthday, and he had several beers himself. During the evening, Applicant touched the female student on her back and arm. He was also observed "spending a lot of time and paying an inordinate amount of attention" to her. She later indicated to University interviewers that the level of his attention made her uncomfortable. (GE 3 at 2-3; Answer)

During the University investigation, the female student and others who reported to Applicant in the video office told investigators that he treated female students differently than males. He reportedly made "gender tinged" or sexist comments towards the female students, such as constantly calling them "spoiled," putting them down, and criticizing them. At other times, he was observed treating females more favorably than males. He was often observed getting too physically close to them. (GE 3 at 5)

Applicant's actions towards the female student on the business trip did not constitute sexual harassment under University policy. However, his workplace conduct did violate University policy, as it "unreasonably interfered with the work performance of his female students, and created a work and learning environment that is hostile and intimidating." The matter was referred to University legal counsel and human resources, but there is no documentation of any further action. (Tr. 84-88, 126-130; GE 3 at 5-6)[3]

Applicant stated in his answer that he "discontinued attending events like this with students entirely" and also stopped drinking. Applicant testified that he later went through training, and learned not [to fraternize] with employees as a supervisor. (Tr. 128; Answer)

In about 2003, Applicant set up his own video production company with another University employee.[4] The SOR alleges that between about 2007 and 2014, Applicant

[3] Applicant did not reference a "written reprimand" in either his answer or his testimony, and there is no record evidence that he received one, as alleged in SOR ¶ 1.h. Applicant testified that he went through training after the investigation, but it is not clear if he was "counseled," as alleged in SOR ¶ 1.i. (GE 3)

[4] Tr. 27-31, 64-65, 98-100. The other employee relinquished his ownership interest in 2009. (GE 2 at 3)

misused significant University athletic department resources, facilities and employees, to further his own business. His company improperly received about $331,000 for this work, resulting in about $187,000 in improper personal profit to Applicant. (SOR ¶¶ 1.a and 1.b) There are also allegations of double-billing (SOR ¶ 1.e), preparation of improper timesheets (SOR ¶ 1.g), and improper use of University computers and e-mail to run his business (SOR ¶ 1.f). Some or all of this conduct was alleged to represent a conflict of interest under University policy. (SOR ¶ 1.c) Applicant also allegedly failed to fully report his outside income to the National Collegiate Athletic Association (NCAA), as required. (SOR ¶ 1.d). Four of these personal conduct allegations (¶¶ 1.a, 1.b, 1.c and 1.e) are also cross-alleged as the financial security concerns. (SOR ¶ 3, as amended).[5]

These allegations stem from the findings of a University investigation concerning Applicant's use of university resources for his own private company for work "closely related to the work he performed for the university." He also did not "clearly and cleanly separate the personal financial aspects of his personal business from his activities and responsibilities" as a University employee. The University also found that Applicant did not disclose his personal business to the University, as required, for a determination of whether it posed a conflict of interest. (GE 2 at 1)

Through his company, Applicant hired University employees, working under his supervision, to perform film and video services for his business. Their work was within the scope of their university duties. Applicant made no effort to separate these duties. The salaried University employees took no leave for the work they did for Applicant's company. They recorded their time on University timesheets the Applicant approved. He was therefore found by the University to have "in effect" approved falsified leave and timesheet records. (GE 2 at 2)

As part of his University employment, Applicant would handle contacts from the media to set up satellite interviews of University student-athletes, coaches and staff. These interviews were conducted in an athletic department studio, with university cameras. Applicant's company billed the media organizations for this work. The only related expense his company incurred was paying the employees for filming the interviews. Through his use of University employees, equipment and facilities, this resulted in a financial gain to Applicant of just under $30,000. (GE 2 at 3-4) Applicant testified that University officials knew the interviews were taking place. He also said he did not have the University's written permission to conduct them while working for his company. (Tr. 100-101,122-126; GE 2 at 3-4)

In connection with the interviews, Applicant's company also invoiced outside media organizations for "satellite uplink" connection fees. In fact, the University paid the satellite fees because of the publicity the interviews brought to the athletic department. Applicant testified that the video company invoices he initially prepared had an all-inclusive "flat fee." At the media companies' request, Applicant later "broke out" the satellite fees separately. He acknowledged at hearing that he made up the figure in the

[5] The Government withdrew SOR ¶ 2.a, concerning a 2010 arrest for driving under the influence.

satellite fee line item in these invoices, though he said the flat fee amount always remained unchanged. He failed to reimburse the University for most of the funds he received. He stated he was inexperienced in preparing these invoices, and denied any "malicious intent." He now understands the need for proper documentation. (SOR ¶ 1.e) (Tr. 65-78; 101-104, 120-122; GE 2 at 3-4; Answer)

Applicant's company invoiced the University's athletic conference for filming and broadcasting certain conference championship events held on campus. Of the $24,800 Applicant's company received from the conference for this work between 2009 and 2013, Applicant paid $7,200 to University employees and students for their work on the camera crews. This resulted in $17,600 in improper personal gain to Applicant. He also instructed student workers to record their time for these events on University timesheets. He used University cameras and equipment to broadcast these events. (Tr. 26-39, 52-55; GE 2 at 4)

Similarly, the University participated in a conference-wide "subscription service" by which viewers could watch a wide variety of conference sporting events. The conference's television providers paid conference schools to film such events on campus. The providers also provided filming equipment and a server, so the events could be "live-streamed" online. Applicant also filmed these events with his company. Related payments were deposited into Applicant's company account. He then paid University employees and student workers for their work filming these events without reimbursing the University. (Tr. 26-39; 110-118; GE 2 at 4)

Applicant often videotaped football practice as part of his University job. He therefore had frequent interaction with the University's head football coach. The coach had a television show, and he asked Applicant to film commercials for the show's sponsors. Applicant and three other university employees did the work, using university cameras. Applicant testified that he did this for about a dozen years. He testified that "[the football coach] and other full-time administrators knew about this. It didn't occur to me that it was an issue." (Tr. 40-47; GE 2 at 4-5)

The University's investigation found that between 2007 and 2013, the coach's business paid Applicant's company over $213,000 for the commercials. Applicant paid the other employees over $74,000 for their work. Neither Applicant nor the other employees recorded leave while filming these commercials for the coach. Thus, "in effect, [they] received dual compensation." Applicant received a personal gain of over $138,000 from these commercials. (GE 2 at 5) This represents the bulk of the $187,320 Applicant was found to have gained through diversion of his services to his company. (GE 2 at 1) (SOR ¶ 1.b)

Applicant and his company also used University employees or scholarship students to film football players' pre-draft workouts for pro team scouts. The workouts were arranged by the athletic department and occurred on University property. Applicant invoiced each pro team for copies of workout films, compensated employees through his company, and did not require that they take leave from the university while

doing this work. Since they did not record leave, the University found that they "in effect received dual compensation." (Tr. 119-120, 130-133; GE 2 at 4-5)

As the head of the video office, Applicant hired people to videotape football games on game days. He prepared timesheets and invoices at the start of the season, for the workers to initial in advance. Sometimes workers did not work all the games they were scheduled to. Once this came to light, the University financial office requested that Applicant prepare timesheets on game day, not in advance, and he complied. (SOR ¶ 1.g)(Tr. 79-84; Answer)[6]

As an athletic department employee, Applicant was required, under NCAA bylaws and University policy, to report outside income and benefits to the NCAA on an annual disclosure form. Applicant testified that he understood that he was to report income he received from the University's apparel contract, and income he received from coaches' camps and clinics. Applicant did not report income earned through his video production company. He was informed by the University that the information he reported on the NCAA form was incomplete. (SOR ¶ 1.d) (Tr. 55-62; GE 2 at 6; Answer)

Applicant testified that he misunderstood what sources of income were to be reported: "I didn't think that was what they were looking for." He believed he had to report outside income which might be considered a recruiting violation, and did not consider that his company's income should have been included. He stated that he did not intend to mislead the University or the NCAA. There is no record evidence of any NCAA annual financial disclosure form Applicant prepared. The University's investigation concluded that the matter should be referred to appropriate athletic department authorities for possible self-reporting to the NCAA. There is no record evidence of what actions were taken by the athletic department. (Tr. 55-62; GE 2 at 6; Answer)

At times, Applicant used his University e-mail account for personal purposes. He said this was due to working long hours, often seven days a week. Twenty company invoices were found on his University computer. (SOR ¶ 1.f)(Tr. 78-79, 105; GE 2 at 2-3))

Applicant did not recall any formal training that he received when he became a University employee. He attended annual conferences regarding the University's television contract, and other matters related to his University position. During the University auditor's investigation. Applicant was made aware of the faculty handbook, and his responsibility to follow it. He acknowledged that there should have been some "separation" between his company and his University employment. He also stated, "I do think it should have [fallen] on me, somewhere in there, to go and review [the handbook]. I think that is a big thing that has changed in my mindset, from working at [the University] until now, is that it should have been my responsibility." (Tr. 48) Applicant testified that he has read a similar handbook related to his current position,

[6] There is no record evidence that Applicant received a "written reprimand" concerning preparing timesheets in advance, as alleged in SOR ¶ 1.h, nor did he reference one in his answer or testimony.

and acknowledged responsibility for knowing it and following it. (Tr. 48-52; 90, 104-105, 110, 126, 133-135)

The University found that Applicant "unilaterally" referred the videography for numerous athletically-related university events to his personal company. He was essentially unsupervised. He had no routine meetings with his supervisor, and she was unaware of his personal business. They had no discussion about whether the athletics department should provide certain services and receive compensation for expenses. (GE 2 at 3, 5)

The University also found Applicant both prepared invoices on University letterhead to media companies and received payments from them. This represented an "inadequate separation of duties in billing and collecting receivables." (GE 2 at 5-6)

The University found that Applicant failed to disclose his personal business to the University, as required by the University policy, and the faculty handbook. The lack of disclosure prevented university administrators from determining whether his personal business was a prohibited conflict of interest, or, if not, how it should have been monitored. (GE 2 at 1)

The University concluded that Applicant's business "is essentially a personal for-profit business activity that competed with the University to perform athletically-related video services and likely would not have been approved by management, if disclosed." (GE 2 at 1) The University further found that Applicant's diversion of this work to his company "likely constitutes an individual conflict of interest under university policy" because his allegiance to the university was "unquestionably compromised." (GE 2 at 2)(quoting University policy) (SOR ¶ 1.c),

Applicant resigned from his university employment in April 2014. He disclosed on his SCA that he was told he would be fired "due to allegations of embezzlement." (GE 1 at 13-15) Applicant also closed his video company. Although the University referred the matter to university police, no criminal charges were brought against him as a result of his conduct. (Tr. 87; 189-191; GE 2)

Applicant testified that he is a different person since he worked at the University. He and his wife have a stronger marriage, and a better family life. Religion has taken on greater importance in his life. He has curtailed or ended his drinking. He is active in church youth activities and volunteers in his local community. (Tr. 88-98; 106-108, 110)

Applicant's wife testified that he is a more attentive husband and father since they moved away from the university town, in summer 2014. Before, he worked long hours and socialized with much younger college students. For some of that time, he and his wife were living apart. Now, he is more involved in their family, community and church life. He has also curtailed or ended his drinking. (Tr. 139-146)

A student pastor at Applicant's church testified that Applicant is a regular participant and group leader mentoring youth members since about 2015. He is an excellent communicator and mentor. The witness considers Applicant to be committed, dependable and trustworthy. (Tr. 149-58)

One of Applicant's current co-workers testified. He has worked for many years in the defense industry. He testified that he could not do his job without Applicant. They travel together on business trips and are a "good team." This witness was involved in interviewing and hiring Applicant. Applicant is punctual, responsive, and provides the Army a valuable service. Applicant's family is important to him. (Tr. 160-169)

Applicant's immediate supervisor, a retired Army officer, testified that Applicant is trustworthy, dedicated, and willing to "go above and beyond" to get the job done. Applicant has never given any reason to doubt his trustworthiness or suitability for a clearance. (Tr. 171-177)

Applicant's final witness was the former director of the office where Applicant now works. He had recently retired from federal service.[7] Applicant has worked in the office for almost three years. The witness attested to Applicant's integrity and the fact that he never turned down an assignment. As the office director, he had final authority to sign off on Applicant's work product for the government. Applicant was an excellent performer, and the witness never questioned his judgment, trustworthiness or reliability. Applicant also has good record-keeping habits. He also testified that he would "almost trust [Applicant] with my life." (Tr. 179-188)

Policies

It is well established that no one has a right to a security clearance. As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."[8]

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

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

[7] This witness also drove from several hours away, very shortly after having a medical procedure, so he could testify for Applicant.

[8] *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

This is an employment misconduct case, albeit one which might be covered in the sports section as well as the business section of the newspaper. While employed in the film and video office of the athletic department of his employer (and *alma mater*), Applicant set up his own private company which essentially competed with the University for videographic business. He did so without his employer's knowledge or permission, and in direct violation of University policy. He used university employees, equipment and facilities in furtherance of his business, on university time. He was found to have diverted or misappropriated funds for his own use, through his business. Applicant acted unilaterally, with no direct or indirect supervision from university employees. He put his own interests ahead of his employer's interests on numerous occasions.

This case lies at the heart of the classified information process because the system counts on those granted the privilege of access to classified information to act in the nation's best interest, and not in one's own best interest. It's also what one does when no one else is looking that counts more than anything. And that is the crux of this case.

As to SOR ¶¶ 1.h and 1.i, there is no record evidence of a written reprimand. SOR ¶ 1.h also does not detail any specific "inappropriate behavior in the workplace." Applicant's answers to these two allegations are almost identical. I find that SOR ¶ 1.h is duplicative of SOR ¶ 1.i, and, to the extent that it is not, is it is too vague to tell. Similarly, Applicant's conduct on the road game business trip is an outgrowth of, and is also similar to, his general workplace behavior towards females and subordinates. It is therefore not sufficiently separate to constitute an independent allegation.

Through his company, Applicant received about $331,000 for videography services performed using University resources between April 2007 and January 2014. (SOR ¶ 1.b) Once he paid his employees, he received a personal profit of about $187,000. (SOR ¶ 1.a) These dollar figures are part of the same set of circumstances. SOR ¶¶ 1.a and 1.b are therefore duplicative. Two other allegations (SOR ¶ 1.e (double-billing) and ¶ 1.f (computer and e-mail misuse) are essentially subparts of Applicant's pattern of conduct, all of which fits under the umbrella of diverting university resources to his own business, and profiting from it (which is fully set forth in ¶ 1.b).

Finally, much of what Applicant did constituted at least a "likely" conflict of interest under University policy. No formal determination was made by University reviewers at the time, precisely because Applicant failed to disclose his conduct to proper authorities, as required. That said, whether or not Applicant's conduct constituted a "conflict of interest," as alleged in SOR ¶ 1.c, is essentially a factual or legal conclusion, which stems, again, from the same set of circumstances alleged elsewhere in the SOR's personal conduct allegations. As such, it, too, is duplicative.[9]

Guideline E, Personal Conduct

AG ¶ 15 expresses 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 or sensitive information. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

> (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

[9] When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. *See* ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice).

regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . .

(2) any disruptive . . . or inappropriate behavior;

(3) a pattern of dishonesty or rule violations;

(4) evidence of significant misuse of . . . [an] employer's time or resources; and

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

The conflict of interest (SOR ¶ 1.c) shown by Applicant's misuse of university resources, misappropriation of university funds, double-billing, and improper timekeeping (¶¶ 1.a, 1.b (taken together), 1.e, 1.f, and 1.g) all satisfy AGs ¶¶ 16(c), ¶ 16(d)(3) and (4). Applicant had a responsibility to follow the university's written policies (SOR ¶¶ 1.d and 1.f) and did not do so. AG ¶ 16(f) therefore applies to that conduct.

AG ¶ 16 (f) also applies to SOR ¶ 1.i. Applicant's conduct in 2012 towards female students and subordinate employees in the video office also constitutes "disruptive or inappropriate behavior," under AG ¶16 (d)(2)

AG ¶ 17 sets forth potentially applicable mitigating conditions under Guideline E:

(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; and

(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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant's conduct towards students and subordinate employees as alleged in SOR ¶ 1.i occurred in 2012, about five years before the hearing. Applicant was later trained and counseled. There is no indication that Applicant engaged in any subsequent inappropriate behavior towards university students or other athletic department employees while he worked there. He stopped drinking and stopped inappropriate socializing with students and subordinates. There is no indication that he has current problems with treating females or subordinate employees properly. Applicant also moved to another part of the state with his family, and no longer works in a university environment. Several current co-workers and supervisors testified credibly in his favor. SOR ¶ 1.i is mitigated under AG ¶¶ 17(c) and 17(d).

The other allegations, concerning Applicant's video business and its relationship to his university job, all occurred more recently and over a longer period of time. That conduct is therefore more difficult to mitigate.

That said, Applicant cooperated with the University's investigation into his actions. He acknowledged his wrongdoing and accepted responsibility for his actions. The University, too, acknowledged in its report that Applicant was allowed to act unilaterally in his own interests, with essentially no supervision. While that does not excuse Applicant's conduct, that factor likely meant Applicant's actions continued for longer than they otherwise might have.

But the issue here is Applicant's mitigation, not the University's. Applicant credibly established that he has undergone significant changes in his life since he resigned in 2014. He closed his business. He recommitted to his wife and his family. They moved away from the university town, to another part of the state. He has stopped or curtailed his drinking. He volunteers in his community, and his religious life is important to him. His work-related character witnesses offered strong, consistent, and credible testimony on his behalf, both as to his character and his professional skills. Applicant testified credibly that he has learned his lesson and will not engage in his security significant behavior again. For those reasons, I conclude that AG ¶¶ 17(c) and 17(d) apply to the remaining Guideline E allegations.[10]

Guideline F, Financial Considerations

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

> Failure 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

[10] As addressed above, several of the Guideline E allegations are duplicative and over-lapping, as they largely stem from the same set of circumstances. Even if they weren't, they would still be mitigated under the same rationale.

> protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding classified information.[11]

The Government cross-alleged four personal conduct allegations (¶¶ 1.a, 1.b, 1.c and 1.e) as financial security concerns. (SOR ¶ 3, as amended). As addressed in Guideline E, above, several of these allegations are duplicative or at least overlap.

Unlike most Guideline F cases, there is no allegation here of delinquent debt. The only potentially applicable disqualifying condition is ¶19(d) "deceptive or illegal financial practices such as embezzlement, employee theft, . . . and other intentional financial breaches of trust."

Applicant stated on his SCA that he was told he would be fired "due to allegations of embezzlement." However, that is the only place in the record evidence where that term is used. Embezzlement is a specific legal term, and a specific crime. I cannot find on the basis of that reference alone that "embezzlement" has been shown.

Applicant was found by the University to have misappropriated funds, and to have improperly diverted significant university resources to his own business. In doing so, Applicant was found to have violated University policy. As a University employee, he had a fiduciary duty to act in the University's best interest. Applicant's actions constituted an "intentional financial breach of trust," and AG 19(d) applies.

The Guideline F mitigating conditions include AG ¶ 20(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"). AG ¶ 20(a) applies for the same reasons set forth under Guideline E, above.

[11] *See* ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Whole-Person Concept

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

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

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and F in my whole-person analysis. I have also considered the total pattern of Applicant's behavior and poor judgment, not just in a piecemeal fashion as a series of unrelated incidents.[12] Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility 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 E:	FOR APPLICANT
Subparagraphs 1.a - 1.i:	For Applicant
Paragraph 2, Guideline J:	WITHDRAWN
Subparagraph 2.a:	Withdrawn
Paragraph 3: Guideline F:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

[12] *See, e.g.,* ISCR Case No. 03-22563 at 4 (App. Bd. Mar. 8, 2006) (regarding the need to avoid a piecemeal analysis).

Conclusion

In light of all of the circumstances, presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant's access to classified information. Eligibility for access to classified information is granted.

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Braden M. Murphy
Administrative Judge