



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03107

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

03/06/2018

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concern, but he did not mitigate the sexual behavior and personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 26, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines D (sexual behavior, E (personal conduct), and F (financial considerations). The action was taken under Executive Order (EO) 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 (AG) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR on October 10, 2017, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on October 27, 2017. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections

and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on November 3, 2017. He did not respond to the Government's FORM. The case was assigned to me on February 14, 2018. The Government documents identified as Items 1 through 9 are admitted in evidence without objection.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. He is 65 years old. He married in 1983, divorced in 1985, remarried in 1987, and separated in July 2010. He has seven children and one stepchild, all of whom are adults. He obtained his high school diploma in 1970 and an engineering certificate in 1980. He enlisted in the U.S. Navy and served on active duty from 1970 until his honorable discharge in 1976. He was honorably discharged from the U.S. Army Reserve in 1982.<sup>1</sup>

Applicant is a prospective employee of a defense contractor. He has been unemployed since December 2012. He worked as an electrical engineer for a defense contractor from June 1982 until he was laid off in December 2012, after his security clearance was revoked. He has since supported himself through unemployment, Social Security, and pension benefits.<sup>2</sup>

From December 2009 to July 2010, Applicant on numerous occasions sexually molested his then 11-year-old granddaughter, whom he and his wife had adopted. He stopped after his wife caught him. He was not criminally charged because neither his granddaughter nor his wife were willing to cooperate with the police investigation. He was not required to register as a sex offender. He stated that he has not molested any other children and he has no future intent to do so. The state police, the state department of children and families, his wife, and his children were aware of the molestation. He stated that his children were told once they got older. He stated that he was not vulnerable to pressure, coercion, or blackmail as a result of his conduct.<sup>3</sup>

Applicant stated that he apologized to his granddaughter and he has had no contact with her since 2010. He stated that he has been celibate since 2010. He attended church daily. He joined religious fraternal organizations. He attended seminars so that he could join prison ministries for sexual abuse inmates to promote bible teachings. He also claims to have attended sexual abuse outpatient counseling every two weeks since 2016. The record contained documentation of his counseling from November 2015 to February 2017. No diagnosis or prognosis was provided. He hoped to make a difference in someone else's life. Though his wife separated from him in 2010 because of his conduct, he hoped to reconcile his marriage in the future and he also hoped for forgiveness from those whom he hurt.<sup>4</sup>

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<sup>1</sup> Items 1, 2, 3, 4.

<sup>2</sup> Items 1, 2, 3.

<sup>3</sup> Items 3, 4, 5, 6, 7.

<sup>4</sup> Items 1, 3, 4, 7.

Applicant admitted that he falsified material facts during his July 2014 subject interview, when he stated that he and his wife separated because they grew apart. He also admitted that he initially falsified material facts during his February 2017 subject interview, when he stated that he and his wife separated because of financial reasons. In fact, as discussed above, he and his wife separated because she discovered that he sexually abused their granddaughter. He claims he did not disclose the sexual abuse during the 2014 subject interview because he assumed the investigator knew about it and he did not bring it up since the investigator did not ask him about it. He was not initially forthcoming during his 2017 subject interview until the investigator told him that the information he had provided in the past was inconsistent with his initial statement. He did not offer an explanation for why he was not initially forthcoming.<sup>5</sup>

Applicant has owned his home since May 2012. The home that he purchased in 1989 was foreclosed in 2009. He purchased another home in 2009 and he stated that he quitclaimed it to his wife in 2010 after their separation. He has not verbally communicated with his wife since their separation. Since 2014, he has given his wife \$1,000 monthly, which she used in combination with state aid she received for having adopted their granddaughter, to pay the mortgage. When she stopped receiving the state aid after their granddaughter turned 18, she became delinquent on the mortgage in 2017. He did not learn about the delinquent mortgage until later, when his daughter told him. In January 2016, he received a call from the collection company for the mortgage creditor, who informed him that the mortgage was past due. Credit reports from June 2014 and August 2017 verify that the mortgage was a joint account and it was \$6,451 delinquent on a balance of \$371,869. Applicant stated that he will assist his wife with bringing the mortgage current once he obtained employment. There is no evidence that Applicant has any other delinquent debts.<sup>6</sup>

### **Policies**

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 to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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(c), the entire process is a conscientious scrutiny of a number of variables known as 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.

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<sup>5</sup> Items 1, 3.

<sup>6</sup> Items 1, 2, 3, 8, 9.

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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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.

Section 7 of EO 10865 provides that adverse 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern for sexual behavior is set out in AG ¶ 12:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual’s judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. . . .

The guideline notes conditions that could raise security concerns under AG ¶ 13. The disqualifying conditions potentially applicable in this case include:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and

(d) sexual behavior of a public nature or that reflects lack of discretion or judgment.

Applicant sexually abused his then 11-year-old granddaughter on numerous occasions, between 2009 and 2010, while she lived in his home after she was adopted by him and his wife. He stopped only after his wife caught him. AG ¶¶ 13(a) and 13(d) apply.

The state police, the state department of children and families, his wife, and his children were aware of the molestation. He stated that his children were told once they got older. While he stated that he was not vulnerable to pressure, coercion, or blackmail as a result of his conduct, he misrepresented the reason he and his wife separated during two separate security clearance interviews. His claims are refuted by his dishonesty during the security clearance process. Therefore, I find that AG ¶ 13(c) is applicable.

AG ¶ 14 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (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 judgment;
- (c) the behavior no longer serves as a basis for coercion, exploitation, or duress;
- (d) the sexual behavior is strictly private, consensual, and discreet; and
- (e) the individual has successfully completed an appropriate program of treatment, or is currently enrolled in one, has demonstrated ongoing and consistent compliance with the treatment plan, and/or has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.

Applicant was in his late 50s when he sexually abused his then 11-year-old granddaughter. AG ¶¶ 14(a) and 14(d) do not apply. His conduct continues to cast doubt on his current reliability, trustworthiness, and judgment. AG ¶ 14(b) does not apply. As he lied during his 2014 interview, and initially during his 2017 interview, when he did not disclose that his conduct was the underlying reason for the separation from his wife, I find that AG ¶ 14(c) does not apply. While Applicant stated that he had been to sexual abuse outpatient counseling every two weeks since 2016, the record only contained documentation of his counseling from November 2015 to February 2017. There is also no evidence of a favorable prognosis from a qualified mental health professional. AG ¶ 14(e) does not apply.

## **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

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

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing. . . .

For the same reasons as set forth above in my Guideline D analysis, AG ¶¶ 16(b) and 16(e) apply.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

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

(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 contributed to untrustworthy,

unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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

Applicant did not correct the falsification he made during his 2014 interview. He only disclosed that his conduct was the underlying reason for the separation from his wife during his 2017 interview after the investigator told him that his initial statement was inconsistent with statements he provided in the past. AG ¶ 17(a) does not apply.

For the same reasons as set forth above in my Guideline D analysis, AG ¶¶ 17(c), 17(d), and 17(e) do not apply.

## **Guideline F, Financial Considerations**

The security concern 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 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. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

(a) inability to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant was unable to pay his mortgage for the home he purchased in 2009. While he stated that he quitclaimed it to his wife in 2010, the credit reports reflect that it remains a joint account. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast

doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

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

There is no evidence that Applicant received financial counseling. There is no evidence that he has made a good-faith effort to repay or otherwise resolve his delinquent mortgage. The credit reports reflect that the delinquent mortgage remains a joint account, despite Applicant's claim that he quitclaimed it to his wife after their separation in 2010. AG ¶¶ 20(c), 20(d) and 20(e) do not apply.

Applicant was not aware that the mortgage for the home he purchased in 2009 was delinquent until January 2016. He has been unemployed since December 2012, solely supported by unemployment, Social Security and pension benefits. He has given his wife \$1,000 monthly since 2014 so that she can apply it towards the mortgage. He intended to assist her with bringing it current once he obtained employment. There is no evidence that Applicant has any other delinquent debts. At this time, there is sufficient evidence to conclude that his financial problems are unlikely to recur, and they do not cast doubt on his current reliability, trustworthiness, and good judgment. I find that AG ¶¶ 20(a) and 20(b) apply.

### **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 D, E, and F in this whole-person analysis. I considered Applicant's honorable military service and his lengthy work as a defense contractor.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concern, but he did not mitigate the sexual conduct and personal conduct security 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 E:	AGAINST Applicant
Subparagraphs 2.a - 2.c:	Against Applicant
Paragraph 3, Guideline F:	FOR Applicant
Subparagraph 3.a:	For 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge