



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-01297

Appearances

For Government:

John Renahan, Esquire, Department Counsel

For Applicant:

Grant Couch, Esquire

05/02/2025

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant has not mitigated the security concerns raised under Adjudicative Guidelines E (Personal Conduct), J (Criminal Conduct), and D (Sexual Behavior). National security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions on April 20, 2023 (the Questionnaire). On August 8, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E, J, and D. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within DoD after June 8, 2017.

Applicant responded to the SOR allegations in a document, dated August 12, 2024, (Answer) and requested a decision based upon the administrative record without a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel prepared the Government's File of Relevant Material (FORM) and provided a copy to Applicant on October 30, 2024. After receiving the FORM, Applicant requested a hearing and hired an attorney to represent him in further proceedings. Department Counsel advised DOHA's staff that he was ready to proceed to a hearing on January 8, 2025. The case was assigned to me on January 28, 2025. DOHA sent Applicant a Notice of Hearing on February 19, 2025, scheduling the case to be heard via Microsoft Teams video teleconference on March 26, 2025.

I convened the hearing as scheduled. Department Counsel offered six documents marked as Government Exhibits (GE) 1 through 6, which I admitted into the record without objection. Applicant testified and submitted 15 documents, marked as Applicant Exhibits (AE) A through O. AE N consists of six character letters. I left the record open until April 2, 2025, to give Applicant the opportunity to supplement the record. He timely submitted two documents, marked as AE P and Q . I admitted all of Applicant's exhibits without objection. The record closed on April 2, 2025. DOHA received the transcript of the hearing (Tr.) on April 2, 2025. (Tr. at 11-13, 80.)

Findings of Fact

Applicant is 31 years old. He was born in the Philippines and immigrated to the United States with his parents in 2009. He became a naturalized U.S. citizen in 2010 at the age of 16. He received a high school diploma in 2011 and an associate's degree in law enforcement three years later. Applicant has been employed by a U.S. Government contractor (Employer G) as a security guard since January 2023. He is seeking national security eligibility for the first time. He married in 2022 and divorced in 2024. He has no children. He lives with three roommates. (Tr. at 14-16; GE 1 at 5-7, 9-11, 20-22, 31-32; AE J; AE L; AE M.)

The Government alleged in the SOR that Applicant is ineligible for a security clearance for several reasons set forth under three adjudicative guidelines. I find the following facts based upon the pleadings, the hearing testimony, and the documentary record:

Paragraph 1, Guideline E (Personal Conduct)

The first SOR paragraph sets forth four allegations. The Government alleged that Applicant had deliberately provided false responses in three Sections of the Questionnaire. He acknowledged that he could understand why the derogatory conduct that he failed to disclose in the Questionnaire could prevent him from qualifying for a security clearance. He testified that his non-disclosures were due to an "oversight" in

responding in the negative to the three questions. He also said that he filled out the Questionnaire on his cellphone rather than a computer, which caused a technical problem. Lastly, he blamed his errors on marital problems he was experiencing at the time. (Tr. at 18-20, 44-47.)

The Government also alleged under Guideline E that Applicant had been terminated by an employer for cause. In the Answer, Applicant denied the key portions of each allegation and provided explanations supporting his denial.

SOR ¶ 1.a. Deliberate Failure to Disclose Employment Termination in the Questionnaire. Applicant worked for Employer I from October 2018 to May 2021. Employer I terminated his employment as a supervisor on May 10, 2021, for violating its policies and procedures. Applicant, however, responded in the negative to a question in Section 13A of the 2023 Questionnaire asking if he had been “fired” from this employment. He noted further that he left this position for an “opportunity at [Employer W].” In addition, Applicant denied in his response to an inquiry in Section 13C of the Questionnaire that he had ever been disciplined for misconduct in the workplace. (GE 1 at 12-13, 46.)

Applicant wrote in the Answer that Employer I suspended him pending an investigation into his conduct. At the hearing, Applicant claimed that he then tendered his resignation in a letter dated May 5, 2021. He provided after the hearing a purported resignation letter dated May 5, 2021. He testified that Employer I refused to accept his resignation and terminated him on May 10, 2021. He testified that he knew he was going to be fired and wanted to “beat [the HR people] to the punch.” He also wrote in the Answer that he wanted to resign before he was fired, but he “was terminated before [he] had a chance to” resign. Applicant admitted at the hearing that he should have disclosed his termination in the Questionnaire. He testified he was not trying to hide this information from the Government. (Answer at 1; Tr. at 17-20, 44-47; GE 1 at 12-13, 18.)

As noted, Applicant testified that his incorrect answer to the Section 13A question was an oversight and was due to his marital difficulties at the time. He also blamed his mistake on his use of his phone rather than a computer to fill out the Questionnaire. He explained that he did not believe that the Questionnaire provided sufficient space for him to provide an explanation of the circumstances under which he left his position at Employer I, so he intentionally answered “No,” knowing it was not true. He claimed he intended to explain to the investigator at his security interview the circumstances of his termination. He also claimed that he filled out the Questionnaire using his cellphone rather than a computer so that he could complete it while he was working. He believes that his use of his cellphone was the problem. He admitted that he made a “huge mistake” by trying to prepare his responses to the Questionnaire on his phone and by being so casual about his responsibility to complete the form properly. (Tr. at 17-19, 37-38, 43-44.)

The investigator's report summarizing Applicant's statements during his security interview on September 18, 2023 (the Report), reflects that he offered a different explanation at the beginning of the portion of the interview about his job termination from Employer I in May 2021. He told the investigator that he left that job for an opportunity to work at Employer W. The interviewer then confronted him with investigative information showing that he was involuntarily terminated by Employer I for numerous reasons, including violations of company policy and misuse of company property. He ultimately admitted to the investigator that the end result of his attempted resignation was that he had been fired and was not eligible for rehire. (Tr. at 18-19, 35-36; GE 3 at 7.)

SOR ¶ 1.b. Deliberate Failure to Disclose in the April 2023 Questionnaire his March 2023 Criminal Charge of Battery. As alleged in SOR ¶ 2.a, Applicant was charged on March 23, 2023, with Battery. Section 22 of the April 20, 2023 Questionnaire asked Applicant if he had been charged with a crime in any court in the preceding seven years. He responded "No."

At the hearing, Applicant claimed that his incorrect response was deliberate and was due to the form, as presented on his cellphone, having inadequate space for him to provide an explanation of what occurred. He said that he brought to his interview a "folder that contains all of my transcripts of anything I needed to disclose." He then explained that he showed the files to the investigator on his phone because he had no access to a printer at the time. The Report makes no reference to Applicant having presented a folder or any documents, either on paper or digitally, at the interview. In his Interrogatory responses in which he adopted the Report, Applicant made no corrections or additions to the Report. (Tr. at 20-21, 37-38, 71; GE 3 at 2-4.)

SOR ¶ 1.c. Deliberate Failure to Disclose in the Questionnaire March 2021 Sexual Harassment Lawsuit. Applicant and Employer I were sued for sexual harassment and wrongful termination. Applicant did not disclose the lawsuit in his response to a question in Section 28 of the Questionnaire about being a party to a civil court action in the past ten years. At the hearing, Applicant relied upon his excuse that he answered this question "No" because he believed the Questionnaire form did not provide sufficient space for him to explain an accurate affirmative response. He claimed he wanted to discuss the lawsuit with the investigator at his security interview. (Tr. at 37-38, 47-48, 60-62; GE 1 at 34.)

At the hearing, Applicant admitted that the investigator was first to raise the matter of his involvement in a civil lawsuit. The Report reflects he told the investigator that his subordinate employee (the Subordinate) had sued him and Employer I because he had terminated her for timecard fraud. He explained to the investigator that she claimed in the lawsuit that he had sexually harassed her. He repeated these comments at the hearing. (Tr. at 52, 60-62; GE 3 at 11; AE B.)

SOR ¶ 1.d. May 2021 Employment Termination by Employer I. Applicant worked for Employer I from October 2018 to May 2021. As noted above, his employment with Employer I as a supervisor was terminated on May 10, 2021. He was terminated for violating the company's policies and procedures and for "gross misconduct." Employer I's "Separation Form" documenting the termination is one of the Government's exhibits. (GE 4).

Employer I conducted an investigation of Applicant in response to a lawsuit filed by the Subordinate in March 2021 against it and Applicant. The lawsuit alleged that he had sexually harassed the Subordinate and had wrongfully terminated her. (See SOR ¶ 3.a, below.) Applicant was required to turn over his company cellphone and laptop. Upon the employer's inspection of Applicant's devices, it determined that he had used them for improper personal communications in group text messages with both subordinate security officials and other supervisors of Employer I. This use violated Employer I's policies and constituted the "gross misuse" of company property and in violation of several company policies. The employer also found that Applicant had violated other policies and had engaged in unprofessional, unethical, and indecent conduct. (Tr. at 23; GE 3 at 11; GE 4 at 2-3.)

At the hearing, Applicant defended his conduct and claimed that he should not have been terminated. He testified that other supervisors used their company cellphones for personal purposes. He sought to minimize his responsibility by blaming others on the group chats for engaging in unprofessional and improper uses of their phones. He described some of the texts of others as "dark humor" and blamed the U.S. military veterans on the company workforce for this culture. (Tr. at 18-23, 50-59.)

Applicant also admitted that he texted on his company cellphone to individuals who did not work for the Employer I about company business. He described some of his text messages with his subordinates as "unprofessional." Applicant believes that another supervisor and his supervisor were verbally counseled for their misuse of their company cellphones. Applicant was the only employee terminated. (Tr. at 22-24, 51-59.)

Paragraph 2, Guideline J (Criminal Conduct)

Under this guideline, the Government alleged that Applicant had been charged with a crime. In the Answer, Applicant admitted the allegation and provided information about the underlying incident and the disposition of the charge.

SOR ¶ 2.a. Battery Charge in March 2023. Applicant was processed on March 23, 2023, by his local county sheriff's department on a charge of Battery, a misdemeanor. The charge arose out of an incident at Applicant's work location that took place on November 15, 2022. At the time of the incident, Applicant worked for Employer B as a private security officer assigned to a grocery store. He encountered an individual, to

whom he referred at the DOHA hearing, as a “transient.” This individual (K) was engaged in a verbal dispute with a store manager. Applicant separated the two parties. K tried to reengage with the manager. Applicant took him by the wrist. In Applicant’s words in his write up of the incident, he then “redirected [K] to the ground.” He restrained K on the ground until K calmed down. He released K when he became cooperative, and K left the store, as directed. A few minutes later, K returned to the store door yelling profanities directed at Applicant and the manager. Applicant again told K to leave the store, and he left. (Tr. at 30-33; GE 2 at 11; GE 3 at 8-11; GE 5 at 5-6; AE E; AE F; AE G.)

Shortly thereafter, a police officer responded to a call from an unknown party and requested to see the store videotape of the incident. The tape was in a locked room and unavailable at the time. The officer returned the next day. As a result of the viewing of the video, the police, and ultimately the prosecutor, determined that Applicant had committed the crime of Battery. A criminal complaint was filed February 17, 2023. Applicant received legal papers in March 2023 summoning him to appear in court. On March 21, 2023, he appeared and was served with the Complaint charging him the misdemeanor of Battery. After being booked and fingerprinted, Applicant was released on his own recognizance and was ordered to stay 100 yards away from K. On April 4, 2023, the prosecutor made an oral motion in court to dismiss the case due to “insufficient evidence.” Applicant explained at the DOHA hearing that he was advised by his attorney that the prosecutor was unable to contact K and could not pursue the prosecution without K. (Tr. at 30-33, 71-72; GE 2 at 8-11; GE 3 at 10-11; GE 5 at 5-6; AE A at 2; AE E; AE F; AE G.)

Applicant wrote in the Answer that he had the videotape and witness statements to show and explain his interactions with K. He commented in his interrogatory responses in GE 2 that “the videotape [of the incident] was available upon request.” At the DOHA hearing, Applicant provided no supporting statements from the store or Employer I that corroborated his version of the events surrounding the incident with K. Neither he nor his attorney offered the videotape of the incident into evidence or made any mention of its existence at the DOHA hearing. (Answer at 3; GE 2 at 5.)

Paragraph 3, Guideline D (Sexual Behavior)

Under this guideline, the Government alleged that Applicant and Employer I were sued for sexual harassment.

SOR ¶ 3.a. Applicant testified at the DOHA hearing that he developed a mutually “consensual,” “flirtatious” relationship with the Subordinate. He was married at the time. He later learned that she had similar relationships with Applicant’s co-workers. He estimated that her behavior involved as many as ten to 12 employees. He was advised that his behavior was not appropriate in the workplace. He admitted that his actions were “a lapse in judgment.” She was transferred to a different location but was still under Applicant’s supervision. It came to his attention that she was sleeping in her car during

work hours and his supervisor initiated an investigation. She was eventually terminated for timecard fraud. Applicant initiated the paperwork, though he claimed his supervisor was involved. (Tr. at 25- 29, 33, 77-78.)

The Subordinate's termination resulted in her lawsuit against Applicant and Employer I, referred to in SOR ¶ 1(c), above. The Subordinate's claims were ultimately submitted to arbitration or mediation and settled for a \$10,000 payment by Employer I. The court action was dismissed. (Tr. at 60-63, 67, 69-70; GE 3 at 1-23; AE B; AE C; AE D.)

At the hearing, Applicant acknowledged that, while married, he had engaged in a flirtatious relationship with the Subordinate, though he denied the far more serious allegations she made against him in her complaint. He described the relationship as mutual. He now believes that he was wrong to behave in that manner since he was her supervisor and was terminated for his behavior. He admitted that his actions were "a lapse in judgment" that came back to "bite him." (Tr. at 52, 60-63, 75; GE 2 at 12-23.)

Mitigation and Whole-Person Evidence

Applicant has taken courses in domestic violence control and sexual harassment prevention to address his past experiences with criminal law and litigation by an alleged victim of harassment. He has also taken a security refresher, counterintelligence awareness, and OPSEC (Operational Security) awareness courses. Applicant introduced six character reference letters and several certificates and awards he received in connection with his employment. (AE H; AE I; AE K, AE N.)

Applicant's character references documents included a letter of appreciation from his supervisor at his current employer, praising Applicant's dedication to the company. He also submitted character letters from another supervisor, a supervisor when Applicant worked at Employer I, and colleagues. The references praised Applicant's work ethic, integrity, reliability, trustworthiness, intelligence, and professionalism. (AE N.)

Applicant testified that he learned from his mistakes while working at Employer I. He understands that a supervisor cannot have a flirtatious relationship with a woman he supervises. He also learned that he must avoid any potentially unprofessional conduct while working. He appreciates that his misconduct at Employer I cost him "a lot." (Tr. at 29.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list

potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1, Guideline E (Personal Contact)

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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 the following two conditions that raise security concerns and potentially may be disqualifying in this case.

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

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

The record evidence established that Applicant deliberately falsified three responses to information sought in the Questionnaire, as alleged in SOR ¶¶ 1.a through 1.c. Applicant intentionally kept relevant derogatory information from the Government. Applicant had several excuses for his false answers, but he testified most consistently that the Questionnaire provided inadequate space to explain each situation. He decided it would be best to explain the circumstances regarding his employment termination, criminal charge, and the sexual harassment lawsuit at his security interview. He provided no explanation why he could not disclose this information accurately in the Questionnaire and just note that he would provide detailed explanations at his interview. His excuse for his falsifications lacked credibility. The record evidence regarding Applicant's termination by Employer I also established the allegation in SOR ¶ 1.d. Accordingly, the burden shifts to Applicant to rebut, extenuate, or mitigate the security concerns raised by his conduct.

AG ¶ 17 sets forth seven mitigating conditions under Guideline E. The following two conditions have possible application to the facts of this case:

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

(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.

Applicant claimed he intended to disclose his employment termination, the Battery charge, and the sexual harassment lawsuit at his security interview so that he could explain the circumstances of each incident while working at Employer I. He failed to offer this information at the outset of his interview. Instead, he waited for the investigator to raise the subject by repeating the question in the Questionnaire. On the subject of his non-disclosure of Applicant's termination by Employer I in May 2021, he repeated to the investigator his false statement in the Questionnaire that he left Employer I for "an opportunity" at Employer W. The investigator then confronted him with the investigative findings that Employer I had terminated his employment. Applicant then denied this initially telling the investigator that he had resigned his position with the company.

With respect to Applicant's omissions of the criminal charge and the sexual harassment lawsuit in the Questionnaire, he answered the investigator's questions about each. It is clear from the Report, however, that he did not disclose the truth in a prompt good-faith effort to correct his concealment of important facts. His evasive statements during the interview about his employment termination reveals that he was hoping to avoid the disclosure of other derogatory information during the interview. If he sincerely intended to disclose information about the Battery charge and the sexual harassment lawsuit, he would have disclosed that information before the investigator raised the subjects to show his good-faith intentions. Applicant failed to satisfactorily establish the mitigating condition set forth in AG ¶ 17(a).

Applicant also failed to establish AG ¶ 17(c). His falsifications were not infrequent and are likely to recur given the circumstances of his decision to provide false information on the Questionnaire in the first place. As noted, he could have disclosed the derogatory information and commented that he will provide detailed response at his security interview. The falsifications cast significant doubt about his reliability, trustworthiness, and good judgment. In addition, the circumstances surrounding Applicant's termination from Employer I show that his transgressions while working at that job were frequent and were hardly minor. His behavior established that he was an unreliable and untrustworthy employee and casts significant doubt about his reliability, trustworthiness and judgment.

Paragraph 2, Guideline J (Criminal Conduct)

The security concern under this guideline is set out in AG ¶ 30 as follows:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes four conditions that could raise security concerns. The following condition has possible application to the facts of this case and may be disqualifying:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted;

The Battery complaint filed by the prosecutor following an investigation by the police of the altercation between Applicant and K establish that the prosecutor believed he had probable cause that Applicant committed the crime of Battery. The fact that the prosecutor was forced to dismiss the charge due to the unavailability of K to testify at a trial is not determinative under the explicit language of AG ¶ 31(b). This charge takes on greater security significance because it arose out of Applicant's conduct as a security guard. He now seeks national security eligibility to continue working as a security guard for a U.S. Government contractor. The record evidence establishes this potentially disqualifying condition. This conclusion shifts the burden to Applicant to rebut, extenuate, or mitigate the security concerns raised by his criminal conduct.

AG ¶ 32 sets out four mitigating conditions under Guideline J. The following three conditions have possible application to the facts in this case:

(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;

(c) no reliable evidence to support that the individual committed the offense; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

None of the above mitigating condition have been established. Insufficient time has passed since the incident and the charges. Applicant continues to work in a position as a security guard that requires appropriate judgment on how to handle many possible situations without escalating an encounter using violence. Future encounters with others who need to be calmed down are likely to recur. He has exhibited poor judgment that casts significant doubt about his reliability and trustworthiness. The dismissal of the criminal case against Applicant is not evidence that he did not commit the crime of Battery. Lastly, the passage of some time without similar incidents, taking a domestic violence course, and his current improved employment record does not constitute evidence of a successful rehabilitation.

Paragraph 3 - Guideline D (Sexual Behavior)

The security concerns relating to the guideline for sexual behavior are set out in AG ¶ 12, which states:

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. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 describes the following four conditions that could raise security concerns and may be disqualifying in this case:

(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.

The record evidence establishes both of the above potentially disqualifying conditions. Applicant's admitted flirtatious activity with a subordinate rendered him vulnerable to coercion, exploitation and duress, especially since he was married at the time of his behavior. Also, the behavior was public in nature and reflects a serious lack of judgment. The burden, therefore, shifts to Applicant to mitigate the security concerns raised by his behavior.

The guideline includes the following four conditions in AG ¶ 14 that could mitigate the security concerns arising from Applicant's sexual behavior:

- (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.

None of the above mitigating conditions have been established. While arguably isolated, the complaint is recent. It cannot be concluded that his behavior is unlikely to recur the next time Applicant supervises a female employee. He provided no evidence that his current employer and co-workers are aware of the sexual harassment lawsuit and the Subordinate's claims, which were very serious. Accordingly, he is still vulnerable to coercion, exploitation, and duress. He cannot properly claim that his behavior was consensual since the plaintiff in the lawsuit was his subordinate and he had the power to terminate her employment, which is exactly what he did. Lastly, the record contains no evidence that Applicant completed or is participating in an appropriate program of treatment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the above whole-person factors and the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant's repeated misconduct in the workplace and in the security clearance application process strongly evidences a lack of judgment and maturity. Overall, the record evidence leaves me with questions and doubts as to Applicant's suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline D:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

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

JOHN BAYARD GLENDON
Administrative Judge