



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



In the matter of:)
)
 ---) ISCR Case No. 11-12635
)
 Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: Ryan C. Nerney, Esquire

06/28/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding personal conduct, use of information technology systems, and foreign influence. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On April 28, 2010, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On an unspecified date, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. He responded to the interrogatories on January 2, 2013.² On January 12, 2015, the DOD CAF issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the

¹ GE 1 (e-QIP, dated April 28, 2010).

² GE 3 (Applicant's Answers to Interrogatories, dated January 2, 2013).

Adjudicative Guidelines for Determining Eligibility For Access to Classified Information (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guidelines E (Personal Conduct), B (Foreign Influence), and M (Use of Information Technology Systems), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on January 28, 2015. In an unsworn declaration, dated February 17, 2015,³ Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on August 3, 2015. The case was assigned to me on October 5, 2015. A Notice of Hearing was issued on October 28, 2015. I convened the hearing as scheduled on November 17, 2015.

During the hearing, three Government exhibits (GE) 1 through 3, and eight of the nine Applicant exhibits (AE) A, B, and D through I, were admitted into evidence without objection. AE C was admitted over the objection, based on hearsay, of Department Counsel. Applicant and one witness testified. The transcript (TR.) was received on November 25, 2015. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He timely submitted a number of documents which were marked as AE J and K, and admitted into evidence without objection. The record closed on December 1, 2015.

Findings of Fact

In his Answer to the SOR, Applicant denied, with explanations, all of the factual allegations of the SOR. Applicant's explanations, treated as admissions, are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 56-year-old employee of a defense contractor who, since August 2014, has been serving as a systems administrator. He had previously been a systems administrator, systems analyst, field engineer, or programmer with other employers since August 1981.⁴ He has never served in the U.S. military.⁵ He was apparently granted a secret security clearance in 2001, with a renewal granted in 2013, and what he referred to as an EBI clearance from 1982 until 1986.⁶ A 1977 high school graduate,

³ Applicant's Answer to the SOR, dated February 17, 2015.

⁴ GE 1, *supra* note 1, at 14-23; AE F (Resume, undated), at 1-3.

⁵ GE 1, *supra* note 1, at 25-26; Tr. at 45-46.

⁶ GE 1, *supra* note 1, at 46-47; Tr. at 44-45. An Extended Background Investigation or EBI is not a security clearance, but it can result in a security clearance.

Applicant received a bachelor of arts degree in Computer Science in May 1981.⁷ Applicant was married in August 1984, separated in December 2009, and divorced in July 2010. He married his current wife in October 2014.⁸ He adopted his first wife's daughter (born in 1976) in the mid-1980's.⁹

Applicant and his first wife started drifting apart and went through several years filled with marital issues leading up to their separation and actual divorce. She refused to attend Applicant's father's funeral in 1995, his mother's funeral in 1999, his college reunion, or his niece's wedding in 2008. He claimed it got to the point where he asked her to help him with something and she refused. He experienced a difficult residence reconstruction project. There was a lack of communication between Applicant and his wife. After the separation, attempted reconciliations failed. During the period of his separation, an employer's contract ended and his position was vacated. He searched for a new position, and actually obtained several short-term ones. During the period 2004 until 2013, 18 friends or relatives passed away. Applicant incurred several injuries, illnesses, and conditions, and he went through several surgeries. At least one very close friend noticed the emotional stress that the various issues were causing Applicant. To minimize the stress which really started to affect him in about 2006, and to relax, Applicant turned to playing Internet games and chatting during online dating relationships.¹⁰

Use of Information Technology Systems & Personal Conduct

(SOR ¶¶ 1.a. and 3.a.): Applicant was employed by a particular government contractor from May 2010 until July 2010. On or about July 24, 2010, Applicant was looking through his personal e-mails on his government furnished equipment (GFE), a computer, and accessed some online dating sites, sports sites, and book sites. When he opened some unsolicited e-mails, he found that they contained photos of nude women. One e-mail contained one photo of five nude women and another e-mail had one photo which he considered offensive, but did not describe. He claimed that if he had known the e-mails contained photos of nude women, he would not have opened them on his office GFE. He immediately deleted the e-mails after conferring with a colleague. Applicant denied that he ever intentionally used his GFE to look at pornographic photos. This was the only time any of the e-mails he opened on his GFE contained photos of nude women. In addition, Applicant's GFE computer screen saver and wall paper contained approximately eight photos of his scantily clothed girlfriend which were not pornographic.¹¹

⁷ GE 1, *supra* note 1, at 13; AE H (Diploma, dated May 23, 1981); AE F, *supra* note 4, at 1.

⁸ GE 1, *supra* note 1, at 28-29; Tr. at 46

⁹ Tr. at 47-48.

¹⁰ AE B (Biography, dated February 15, 2015), at 2-3; Applicant's Answer to the SOR, *supra* note 3, at 3-5, 8; Tr. at 29-33, 46-48, 53-54.

¹¹ GE 3 (Personal Subject Interview, dated November 18, 2010), at 1-2; GE 3 (Personal Subject Interview, dated December 6, 2010), at 1; Tr. at 50-51, 54; Applicant's Answer to the SOR, *supra* note 3, at 1-2.

On or about July 27, 2010, one of Applicant's supervisors approached him and asked to see the photos of his residence reconstruction project. Applicant's GFE computer wallpaper included photographs of his then-girlfriend in a bikini. After viewing her photos and photos of the residence, the supervisor departed. What occurred next is unclear. Applicant was initially of the belief that she went directly to the information technology (IT) department and asked that Applicant's GFE computer be scanned. There is also some evidence that Applicant's GFE was merely randomly scanned. The actual fact in this regard is unimportant. According to an incident report filed on July 30, 2010, the scan of Applicant's GFE found that he had been accessing websites for online dating which were characterized as "inappropriate," as well as 15 photos that were also characterized as "inappropriate." Two of the photos were deemed "sexually explicit" and "pornographic" in nature.¹²

On July 28, 2010, Applicant was terminated from his employment without warning due to "violation of company policy" and "unauthorized use of GFE for sexually explicit or sexually oriented materials."¹³ Although the SOR alleged that Applicant was terminated from employment for "viewing pornographic websites," the evidence upon which the allegations are based, the Incident History, simply refers to them as "inappropriate websites."¹⁴ The two terms are not synonymous.

There is no IT report of specific findings, a report of investigation by the employer, a copy of the company policy supposedly violated by Applicant, copies of the troublesome photographs, or explicit descriptions of what were construed as sexually explicit or pornographic, in evidence. There is no evidence of any subsequent alleged misuse of GFE or violations of company policies.¹⁵

Foreign Influence

Over a period estimated by Applicant to be 15 months, Applicant chatted with various foreign individuals while playing online games and involved in online dating. He explained that to be successful in these games, it was necessary to "ally" with as many individuals as possible to assist him in winning. The games required communication and occasional chats. Applicant's online dating resulted in "relationships" with several foreign women, but none of those "relationships" involved physically seeing or meeting the women except by telephone, or photographs and videos.

One such "relationship" with a woman in the Philippines in November 2009 involved his sending various sums of money to her via Western Union. Applicant's two explanations regarding the amounts sent her are inconsistent. He told an investigator from the U.S. Office of Personnel Management (OPM) in October 2010 that he had sent her \$6,000 for plane reservations, \$7,000 for her father's medical care, and \$25 for support. He changed

¹² Tr. at 82-83; GE 3 (Personal Subject Interview (November 18, 2010)), *supra* note 11, at 1.

¹³ GE 2 (Incident Report, dated August 6, 2013).

¹⁴ GE 2, *supra* note 13.

¹⁵ Tr. at 56.

the amounts during the hearing in November 2015, and said he sent her \$5,000 for plane reservations, and \$25 on two occasions. When she asked for more, he said no, and the “relationship” ended.¹⁶ Because Applicant’s initial explanation was only months after the fact, and the most recent one was five years later, I have given the initial explanation more weight as being more reliable.

In February 2010, Applicant established a “relationship” with a woman from Malaysia. He also sent her various sums of money via Western Union. Once again, Applicant’s two explanations regarding the amounts sent her are inconsistent. He told the OPM investigator that he had sent her \$20,000 for plane reservations, \$3,000 to have her released from Thai customs because she supposedly possessed gold bars, and \$37,000 for plane reservations to return home. He changed the amounts during the hearing, and said he sent her \$2,000 for plane reservations. He added that he also sent her unspecified sums on over ten occasions. Western Union eventually stopped Applicant from sending funds overseas. When she asked for more, he said no, and the “relationship” ended.¹⁷ Once again, because Applicant’s initial explanation was only months after the fact, and the most recent one was five years later, I have given the initial explanation more weight as being more reliable.

On an unspecified date, Applicant established another “relationship” with a woman from the Philippines. He sent her various sums of money via Money Gram. Applicant’s two explanations regarding the amounts sent her are inconsistent. He told the OPM investigator that he had sent her \$200 to pay her way out of her contract with her handler, and \$50 for living expenses. He changed the amounts during the hearing, and said he sent her \$370 to buy out her contract. The “relationship” ended.¹⁸ Once again, because Applicant’s initial explanation was only months after the fact, and the most recent one was five years later, I have given the initial explanation more weight as being more reliable.

In November 2009, Applicant established another “relationship” with a woman from the Philippines. He sent her an unspecified sum of money to travel to the United States, but she used it for other purposes. When she requested additional money, he refused to send it and the “relationship” ended.¹⁹

Applicant met other foreign women over the Internet, but none of those involved sending money to them, even though some of the women requested money. He acknowledged that some of the women were taking advantage of him in scams, but he was not aware of the truth until later. He denied having a bond of affection, loyalty, or friendship obligation for any of the foreign nationals with whom he had the aforementioned “relationships.” Applicant entered into an exclusive relationship with the woman who is now his wife in May 2011. He no longer plays any of the Internet games and has ceased all

¹⁶ GE 3 (Personal Subject Interview, dated October 29, 2010)), at 1; Tr. at 57-59.

¹⁷ Tr. at 61-65; GE 3 (Personal Subject Interview (October 29, 2010)), *supra* note 16, at 1-2; GE 3 (Personal Subject Interview (December 6, 2010)), *supra* note 11, at 3.

¹⁸ Tr. at 66-71; GE 3 (Personal Subject Interview (December 6, 2010)), *supra* note 11, at 3-4.

¹⁹ GE 3 (Personal Subject Interview (December 6, 2010)), *supra* note 11, at 4, 6.

contacts with foreign women.²⁰ Applicant noted that he earned \$156,000 in 2008 and \$197,000 in 2009, before his income dropped substantially in 2010.²¹

On February 9, 2015, Applicant underwent a self-referred psychological evaluation conducted by a licensed psychologist.²² He was interviewed face-to-face for nearly four hours and administered several tests. The psychologist determined that Applicant was “characteristically other-oriented, i.e., his concerns and focus are compassionately for the safety and well-being of others.”²³ The psychologist opined that²⁴

prominent in [Applicant’s] character are the traits of a positive work ethic; a respect for authority and boundaries; being reliable and dependable; being determined and committed to success and the organizations he works for, being very moral and having a well-developed conscience to guide him interpersonally; and having a superior intellect.

The psychologist concluded that the incidents reported are²⁵

an anomaly, incongruent with [Applicant’s] character, and do not represent an ongoing pattern of behavior or in his interpersonal proclivities. He clearly possesses the personality or character attributes, adopted/developed from an early age that include a sense of duty, responsibility, propriety and appropriate boundaries.

Character References and Work Performance

Former colleagues from his time with various employers, including one who has known him since 1988, as well as current managers, supervisors, and colleagues, have all commented favorably about Applicant. One, who has known Applicant since 1993, characterized him as working relentlessly, learning continuously, retaining knowledge indefinitely, and applying knowledge steadily. He added that Applicant is on the short list of people he would trust with his life, and on an even shorter list of those he would trust with his money and his family.²⁶ Others have referred to Applicant’s reliability, trustworthiness, good moral character, integrity, discretion, loyalty, honesty, efficiency,

²⁰ GE 3, *supra* note 2, at 6; GE 3 (Personal Subject Interview (December 6, 2010)), *supra* note 11, at 7.

²¹ Tr. at 78.

²² AE D (Resume, undated).

²³ AE C (Psychological Evaluation, dated February 13, 2015), at 3.

²⁴ AE C, *supra* note 23, at 5-6.

²⁵ AE C, *supra* note 23, at 6.

²⁶ AE K (Character Reference, dated November 24, 2015); AE A (Character Reference, dated February 7, 2015).

professionalism, problem-solving skills, and strong work ethic.²⁷ Applicant's very close friend, a person who has known him since 1988, described the emotional stress with which Applicant was previously dealing. After Applicant went through what he called "that patch of time," Applicant started returning to his old self.²⁸ He served as a middle school basketball coach, and he became a basketball referee and baseball umpire for 12 years. He was also active in the community chapters of several national service organizations.²⁹ Over the years, Applicant completed many professional improvement courses,³⁰ and he was awarded a number of different certificates of appreciation or monetary awards.³¹ Applicant's 2014 performance review reflects a person who achieves expectations.³²

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."³³ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."³⁴

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. The entire process is a conscientious scrutiny of a number of

²⁷ AE A (Character References, various dates); Tr. at 25-43.

²⁸ Tr. at 25-42.

²⁹ AE B, *supra* note 10, at 2.

³⁰ AE G (Certificates, various dates).

³¹ AE J (Certificates, various dates).

³² AE E (Performance Review, undated).

³³ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³⁴ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”³⁵ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.³⁶

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”³⁷

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”³⁸ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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 avoided drawing inferences grounded on mere speculation or conjecture.

³⁵ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

³⁶ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

³⁷ *Egan*, 484 U.S. at 531

³⁸ See Exec. Or. 10865 § 7.

Analysis

Guideline M, Information Technology Systems

The security concern under the guideline for Use of Information Technology Systems is set out in AG ¶ 39:

Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology Systems include all related computer hardware, software, firmware, and data used for the communication, transmission, processing, manipulation, storage, or protection of information.

The guideline notes a condition that could raise security concerns. Under AG ¶ 40(e), security concerns may be raised by the “unauthorized use of a government or other information technology system.” This guideline generally refers to sending or soliciting sexually-oriented messages or images, or the downloading, creating, storing, or displaying computer files of a sexual nature. In mid-2010, Applicant opened an Internet site on his GFE that his employer considered an “inappropriate” website. The sole evidence pertaining to it was the name, and that name, without more, seems to indicate it was an online dating website. There is zero evidence that it was a “pornographic” website. In July 2010, while he was again on the GFE, he opened two unsolicited e-mails addressed to him. One of the e-mails contained photos of nude women and the other contained a photo of what he considered offensive. Applicant promptly deleted the e-mails. He also had photos of his scantily clad girlfriend on his screen saver and wall paper. A subsequent computer scan of his GFE conducted by the IT department revealed the access to the “inappropriate” website as well as the photos that were characterized as “inappropriate.” Two of the photos were deemed “explicit” and “pornographic” in nature. As a result, the following day, Applicant was terminated from his employment due to “violation of company policy” and “unauthorized use of GFE for sexually explicit or sexually oriented materials.” AG ¶ 40(e) has been established.

The guideline also includes examples of conditions that could mitigate such security concerns. Under AG ¶ 41(a), the disqualifying condition may be mitigated where “so much time has elapsed since the 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.” Similarly, AG ¶ 41(c) applies where “the conduct was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification of supervisor.”

While Applicant did not promptly notify his supervisor, he did confer with a colleague to determine what to do, and he immediately deleted the e-mails in an effort to correct the situation. According to the apparent prevailing community standards, the employer considered two of the photos to be “sexually explicit” and “pornographic” in

nature. Department Counsel argued that this was not the only such incident and that Applicant “had a history of viewing this material.”³⁹ His argument is based purely on speculation, for there is no evidence to suggest that it happened more than once. Nevertheless, even assuming the accuracy of the allegation, the passing of over four and one-half years from the incident to the date the SOR was issued, without recurrence, is sufficient to conclude that it is unlikely to recur, and it no longer casts doubt on Applicant’s reliability, trustworthiness, and good judgment. AG ¶ 41(a) applies, and AG ¶ 41(c) partially applies.

Guideline E, Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes conditions that could raise security concerns. Under AG ¶ 16(c), security concerns may be raised by:

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

Also, it is potentially disqualifying under AG ¶ 16(e) when there is:

personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person’s personal, professional, or community standing. . . .

The alleged behavior consisted of being involuntarily terminated from his employment in July 2010 for “viewing pornographic websites.” Applicant has been consistent in his rendition of the facts. The evidence is not in dispute. Applicant was involuntarily terminated from his employment due to “violation of company policy” and “unauthorized use of GFE for sexually explicit or sexually oriented materials.” The IT scan of Applicant’s GFE revealed that he viewed an “inappropriate” online dating website, but there is zero evidence that the website was “pornographic” in nature. The

³⁹ Tr. at 101.

allegation failed to address the issues related to the e-mails. Nevertheless, there is reason for further discussion. AG ¶¶ 16(c) and 16(e) have been partially established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(c) may apply if “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.”

Similarly, AG ¶ 17(d) may apply if “the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.” Also, if “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress,” AG ¶ 17(e) may apply.

In July 2010, during a period when Applicant was under substantial emotional stress, he was involuntarily terminated from his employment due to “violation of company policy” and “unauthorized use of GFE for sexually explicit or sexually oriented materials.” The alleged behavior, both the viewing of an “inappropriate website as well as the opening of unsolicited e-mails each occurred on one occasion, over four and one-half years before the SOR was issued. Applicant took positive efforts to reduce or eliminate the behavior of online dating and game-playing. He remarried. He was subsequently evaluated by a licensed psychologist and found to be free of any psychological disorders. He acknowledged his behavior. There is no evidence of any subsequent alleged personal conduct. Considering the fact that the “inappropriate” website dealt with online dating, and not pornography, the significance of the personal conduct is minimized. Applicant has reduced or eliminated his vulnerability to exploitation, and through his rehabilitative efforts, the alleged untrustworthy, unreliable, or other inappropriate behavior, is unlikely to recur. AG ¶¶ 17(c), 17(d), and 17(e) apply.

Guideline B, Foreign Influence

The security concern under the Foreign Influence guideline is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(a), it is potentially disqualifying where there is “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” Similarly, under AG ¶ 7(e), security concerns may be raised when there is “a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant is not a naturalized U.S. citizen. He was born in the United States of parents who were also born in the United States. His entire immediate and extended family members are also U.S. citizens. There is no evidence (or allegations) that he has any family members or business or professional associates who are citizens or residents of a foreign country. In 2009 and 2010, he did, however, have long-distance online and telephone relationships with several women who were foreign-born residents of various countries. Although he never physically saw or met the women, except by telephone, photographs, or videos, he did send them various sums of money, estimated to be a total in excess of \$60,000, allegedly earmarked by the recipients for transportation, medical care, support, and release from a customs. Applicant acknowledged that some of the women were taking advantage of him in scams, but he was not aware of the truth until later. He denied having a bond of affection, loyalty, or friendship obligation for any of the foreign nationals with whom he had the aforementioned “relationships.”

Applicant’s online dating and gaming forays with foreign women ceased in 2011 when he met the woman who eventually became his second wife. The security significance of these identified conditions requires further examination of Applicant’s former foreign “relationships” to determine the degree of “heightened risk” or potential conflict of interest. Furthermore, Department Counsel argued that Applicant’s actions revealed cloudy judgment, a lack of self-discipline, and a vulnerability to possible manipulation and exploitation. The SOR alleged that Applicant wired money to various oversea locations “in an attempt to incite the relationships.” (Emphasis added).⁴⁰ The evidence is persuasive that, after nearly three decades of marriage and a separation and pending divorce, Applicant was active in online dating and simply wished to make the right social connection with a female. Nevertheless, AG ¶¶ 7(a) and 7(e) are partially established.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where:

⁴⁰ It is unclear why the word “incite” was used in the SOR for that word generally conveys a negative implication, such as to stir up, fan the flames of, provoke, inflame, egg on, whip up, or foment. The evidence seems to infer another meaning such as encourage, kindle, arouse, or stimulate.

the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.

Similarly, AG ¶ 8(b) may apply where the evidence shows:

there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

In addition, AG ¶ 8(c) may apply where “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.”

In assessing whether there is a heightened risk because of an applicant’s “relationships” in foreign countries, it is necessary to consider all relevant factors, including the totality of an applicant’s conduct and circumstances in light of any realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to realize that Applicant never intended to, and did not, leave the U.S. to enter any of the foreign countries, and that his sole intent was to have individuals travel to the U.S. for brief visits to explore possible continuing relationships. In fact, none of those foreign women ever entered the U.S., and their sole purpose was seemingly to scam money from Applicant. Yes, he did send the women substantial sums of money, but any “relationships” that he might have developed with them ceased in 2010 or 2011, at least four years before the SOR was issued. In those circumstances, there is very little potential for pressure, coercion, exploitation, or duress.

Applicant’s immediate family and extended family still reside in the U.S., and those foreign women still remain overseas without any continuing contact with Applicant. There is no risk, much less a “heightened risk,” of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance because of any close or continuing relationship with those foreign women. While Applicant may have been somewhat naive, and displayed a lack of judgment, in falling for scams and sending such large sums of money to strangers, I am persuaded that Applicant’s loyalty to the United States is steadfast and undivided, and that he has “such deep and longstanding relationships and loyalties in the U.S., that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest.” AG ¶¶ 8(a), 8(b), and 8(f) 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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁴¹

There is some evidence against mitigating Applicant's use of information technology systems, personal conduct, and foreign influence concerns. Applicant was involuntarily terminated from his employment due to "violation of company policy" and "unauthorized use of GFE for sexually explicit or sexually oriented materials." The IT scan of Applicant's GFE revealed that he viewed an "inappropriate" online dating website, and on one occasion in July 2010, he opened two unsolicited e-mails, one of which happened to contain photos of nude women, and the other of which contained something that he considered "offensive." In 2009 and 2010, he engaged in long-distance online and telephone relationships with several women who were foreign-born residents of various countries. He sent them various sums of money, estimated to be a total in excess of \$60,000, allegedly earmarked by the recipients for transportation, medical care, support, and release from a customs.

The mitigating evidence under the whole-person concept is more substantial. Applicant's alleged behavior occurred over four and one-half years before the SOR was issued, and there is no evidence of subsequent conduct of a similar nature. There is no evidence of a personality disorder. Applicant has a good reputation for reliability, trustworthiness, good moral character, integrity, discretion, loyalty, honesty, efficiency, professionalism, problem-solving skills, and a strong work ethic. He was active in his community, and served as a middle school basketball coach, as well as a basketball referee and baseball umpire for 12 years. He was also active in the community chapters of several national service organizations integrity and trustworthiness. Applicant's

⁴¹ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

emotional stress has dissipated and he has remarried. He no longer plays online games and no longer enters online dating websites. The alleged behavior is unlikely to recur. Under the evidence presented, I have no questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline M:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge