



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



In the matter of: )  
)  
) ISCR Case No. 19-00065  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brittany Muetzel White, Esq., Department Counsel  
For Applicant: John V. Berry, Esq.

01/08/2020

**Decision**

HARVEY, Mark, Administrative Judge:

From about 2012 to 2014, Applicant solicited prostitutes five or six times while he held a security clearance. Sexual behavior and personal conduct security concerns are not mitigated. Access to classified information is denied.

**Statement of the Case**

On February 2, 2018, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On May 24, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines D (sexual behavior) and E

(personal conduct). (HE 2) On June 27, 2019, Applicant responded to the SOR, and he requested a hearing. (HE 3)

On August 26, 2019, Department Counsel was ready to proceed. On September 9, 2019, the case was assigned to me. On September 17, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for November 20, 2019. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered eight exhibits; Applicant offered five exhibits; and all proffered exhibits were admitted into evidence. (Tr. 14-18, 26-27; GE 1-8; Applicant Exhibit (AE) A-AE E). Applicant provided documents to complete two exhibits after his hearing. (Tr. 15-17, 90-91; AE B; AE C) On December 3, 2019, DOHA received a transcript of the hearing.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript pages.

### **Findings of Fact**

In Applicant's SOR response, he made admissions related to SOR ¶¶ 1.a and 2.a. (HE 3) He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is a 58-year-old senior engineer, who has been employed by his current employer for 19 years. (Tr. 18-19, 32; GE 1) He held a security clearance with access to sensitive compartmented information (SCI) from 1986 to 2017. (Tr. 19, 35-36) He believes that if his security clearance is reinstated he will be able to assist with problem-solving in the intelligence community. (Tr. 33) He will be able to make important contributions to national security. (Tr. 33) He has been married for 29 years. (Tr. 28, 67) He has three children. (Tr. 35; GE 1)

In 1985, Applicant received a bachelor's degree in electrical engineering. (Tr. 18; GE 1) He received one master's degree in electrical engineering and computer engineering, and a second master's degree in networks and computer security. (Tr. 18; GE 1)

### **Sexual Behavior and Personal Conduct**

SOR ¶¶ 1.a and 2.a allege from about 2012 to 2014, while granted access to classified information, Applicant solicited prostitutes about six times. Applicant said he solicited prostitutes five or six times. (Tr. 20)

Applicant had a lengthy career performing numerous high-risk missions acting in a covert capacity on behalf of a non-DOD agency, which will be referred to as another government agency (AGA). (Tr. 22) While on close-contact sensitive classified missions outside the United States on behalf of an AGA, Applicant befriended and deceived foreign nationals and U.S. citizens. (Tr. 21, 23; AE A at 5) He was successful at exploiting others

in support of the mission. (Tr. 21) Applicant believed he was not psychologically equipped or trained for such missions. (Tr. 21) He was psychologically “over his head” because of the circumstances of the missions. (Tr. 57) He was taking AndroGel, a medication which increased his libido and aggressiveness, and he believed, AndroGel adversely affected or contributed to his decisions to seek sexual release from prostitutes. (Tr. 23-25, 57) AndroGel was part of his high-dosage testosterone therapy and was prescribed by his physician. (Tr. 70; AE A at 5) His dose of AndroGel was reduced by half after his last involvement with a prostitute in 2014. (Tr. 26) His medication does not currently affect his judgment. (Tr. 35)

From 2012 to 2014, Applicant held a security clearance with access to SCI. (Tr. 35-36) Applicant engaged in sexual intercourse with the prostitutes while he was on solo missions without proper psychological support. (Tr. 24-25) He was “embedding himself into organizations and getting to know people and deceiving them.” (Tr. 39) He did not have anyone on his team to address his concerns and issues. (Tr. 24) He described his behavior with prostitutes as a “catastrophic personal failure” and as “totally unacceptable.” (Tr. 24-25, 33, 58) He did not engage in sexual activity with prostitutes before 2012 or after 2014. (Tr. 26, 34, 57)

The prostitutes in the foreign country worked in licensed bordellos, and Applicant’s engaging in sex with them for money was not a crime. (Tr. 25) He did not consume alcohol before going to the bordellos. (Tr. 52) He went to different bordellos sometimes in different cities. (Tr. 48, 51) The AGA knew what city Applicant was located in; however, the AGA did not know when he went to a bordello. (Tr. 49) Applicant paid the prostitutes with cash, and the prostitutes did not know his name. (Tr. 25, 44-45, 55-56) He believed he paid about \$100 each time. (Tr. 54-55) He did not bring identification documents to the bordello. (Tr. 53) He engaged in sexual intercourse with the prostitutes in the bordello, and he used a condom. (Tr. 47, 50, 55, 78) He assumed the women in the bordello were old enough to be legally authorized to engage in such conduct in the foreign country where he engaged in sex with them. (Tr. 77) He suggested that the bordello would not be licensed by the foreign government without ensuring the women engaging in sex were not minors. He did not know the nationality of the prostitutes. (Tr. 46, 49, 53-54) He described the sex with the prostitutes as “the release to keep myself sane” and to maintain his “balance.” (Tr. 58, 69, 78)

When Applicant was on an overseas mission, he maintained security. He conceded his conduct with prostitutes while on a mission was “extremely risky.” (Tr. 51) He denied that he engaged in any conversation with the prostitutes. (Tr. 48, 50) He said:

I talk to no one. There’s no reason to talk to anyone. Everyone’s a threat. Any conversation with anyone – in the plane on the street – it all represents a threat. There’s no reason to talk to anybody about anything. I mean, when I was doing these things, I was completely isolated socially, other than the people that I was deceiving -- (Tr. 47-48)

\* \* \*

Again, for each one of these missions, it was isolation. Again, everyone represents a threat. Every person. It's just the shopkeeper. There's no sense in engaging in conversations with anyone. You engage in a conversation with someone normally, and then all of a sudden it's, well, why are you here? And then, what are you doing? Or, what's the nature of your business? And there's no good that comes from any of those conversations. (Tr. 50)

Applicant conceded, "I admit fully, without reservation, that I put myself at risk, I put the mission at risk, and it was wrong." (Tr. 62) His missions on behalf of the AGA were successfully accomplished notwithstanding Applicant's involvement with prostitutes. (Tr. 21, 25, 35, 75)

Applicant was supposed to report to the AGA occasions when he was stopped or detained going to or exiting a place or any problems. (Tr. 60) He disclosed operational errors because they put the mission and lives at risk. (Tr. 79) The first time Applicant disclosed his involvement with prostitutes was in May 2017 before he took an AGA polygraph test. (Tr. 36-37, 79; GE 4; GE 5) He believes he passed the polygraph test administered after his disclosures about his involvement with prostitutes. (Tr. 80) He said he did not disclose his involvement with prostitutes before 2017 because at the time of the conduct he perceived it was not wrong to patronize prostitutes while on a mission, and from 2014 to 2017, he suppressed the information. (Tr. 37, 61) Patronizing prostitutes was legal and accepted in that country. (Tr. 63) He said, "I buried stuff that I did, and this all fell in that same category." (Tr. 37) He further explained, "I buried it, along with all the other things that I did to survive." (Tr. 70) He put the information away, and then he forgot about it. (Tr. 37) In June 2017, AGA revoked Applicant's SCI access because of his involvement with prostitutes from 2012 to 2014. (Tr. 32) AGI cited the repeated acts of engaging in sex with prostitutes over several years, and noted it was "even more of a concern that he was engaging in prostitution in a foreign country while assigned there for employment with the U.S. Government." (GE 5 at 3-4) In September 2017, Applicant's first appeal of the revocation of his SCI access was denied. (GE 7) In December 2017, the AGA decision to revoke his SCI access was final. (GE 3)

During Applicant's involvement with prostitutes, he was unaware of the prohibitions against supporting human trafficking through providing financial support to entities engaged in prostitution. (Tr. 41-42) The Trafficking Victims Protection Act (TVPA) of 2000 is a federal law addressing trafficking in persons. The TVPA prohibits trafficking related-conduct, including patronizing, or soliciting of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age. See 22 U.S.C. § 7101 *et seq.* Extraterritorial jurisdiction does not apply to Applicant's conduct because it occurred outside of the United States, and the other statutory exceptions establishing extraterritorial jurisdiction in the TVPA do not apply in this case. See Caroline A Fish, *Extraterritorial Human Trafficking Prosecutions: Eliminating Zones of Impunity Within the Limits of International Law and Due Process*, St. John's L. Rev. Vol. 91, No. 2, (Jan. 2018). AGA's policies against human trafficking from 2012 to 2014 are not part of the file.

At the time he engaged in solicitation or patronization of prostitutes outside the United States, Applicant did not know whether the women were coerced or fraudulently induced to engage in prostitution at the bordellos. The women could have been from Russia or other nations of heightened security concern. (Tr. 77) Applicant was not fluent in the language of the country where the mission occurred, and persons in the bordello may have realized he was an American. (Tr. 77) The training that he received on human trafficking was perfunctory “check the box, answer the question,” and it was not sufficient to cause Applicant to think about the law or prohibitions against trafficking before he engaged in sexual intercourse with prostitutes. (Tr. 42)

After his security clearance was revoked, Applicant received psychological counseling for three sessions from an AGA-cleared psychologist. (Tr. 22, 26, 71; AE A at 6) He needed counseling to cope with the years of AGA-authorized lying to complete AGA missions. (Tr. 26) He decided that he could not engage in future missions involving deception. (Tr. 27) He accepted responsibility for his “catastrophic moral failure” and “catastrophic mistake” relating to his sexual intercourse with prostitutes. (Tr. 27, 35)

Applicant’s spouse has been employed by AGA since 1986, and she is aware his security clearance was revoked. (Tr. 28, 68, 76) She did not ask, and he did not tell her the reason his security clearance was revoked. (Tr. 28, 66-67) He did not want anyone who is close to him to know about his patronization of prostitutes because he is embarrassed about his behavior. (Tr. 68) He conceded he has a personal and professional interest in keeping his involvement with prostitutes a secret. (Tr. 69) If someone attempted to use his involvement with prostitutes to coerce or extort classified information from him, he would inform security, law enforcement, and his spouse about his involvement with prostitutes. (Tr. 29; AE A at 6)

In sum, Applicant promised that he would not behave in the manner alleged in the SOR in the future. (Tr. 34) He will not be exposed to the pressure of using deception and ingratiating himself with others in a covert role because he will not return to employment involving his covert-intelligence activity. (Tr. 34) He requested reinstatement of his security clearance out of a sense of duty and patriotism. (Tr. 34) He has the skills and ability to contribute to national security, and he wanted to use those skills to benefit the United States. (Tr. 34, 75)

## **Character Evidence**

Applicant has more than 30 years of employment in the intelligence sector. (AE A at 8) In 1996, he received letters of commendation from President Clinton, the Director of AGA, and the Deputy Director of AGA. (Tr. 31; GE 8 at 2; AE E) He received a citation for a complex collection operation in 1995, and he was praised for his courage, attention to detail, and technical expertise in a field operation. (AE A at 8; AE E) In 1997, Applicant received a commendation from the Director of AGA. In 1997 and 1998, he received Certificates of Distinction from AGA. (Tr. 30-31; AE E) He also received some classified awards. (Tr. 31)

Aside from his activities with prostitutes from 2012 to 2014, Applicant had a flawless record. (Tr. 64, 74) He accepted numerous missions which entailed a risk of capture and death. (Tr. 64; GE 8 at 2) The circumstances of his life from 2012 to 2014 were anomalous and will not recur, and he will not be involved with prostitutes in the future. (Tr. 74-75) He never improperly disclosed classified information. (Tr. 74) He described himself as an honest, trustworthy person, and he noted that he has previously reported security-related incidents or mistakes. (Tr. 65, 78-79; SOR response) His loyalty and dedication to the United States are impeccable. (Tr. 65, 78-79)

## **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.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. 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.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Sexual Behavior

AG ¶ 12 contains the security concern for sexual behavior:

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 includes conditions that could raise a security concern and may be disqualifying:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (b) a pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop;
- (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.

SOR ¶¶ 1.a and 2.a allege, and Applicant admitted that from about 2012 to 2014, while granted access to classified information, Applicant solicited prostitutes about six

times. The conduct was not criminal because he engaged in solicitation in a licensed bordello, and prostitution is legal in the country where it occurred. Department Counsel did not cite and I have not found any criminal statutes that Applicant violated. Applicant was able to stop soliciting prostitutes in 2014, and it has not recurred in more than five years. Applicant's sexual behavior occurred in private. AG ¶¶ 13(a) and 13(b) are not established. AG ¶ 13(c) and 13(d) are established because his sexual intercourse with prostitutes caused him to be vulnerable to exploitation, and it reflects a lack of discretion and judgment.

In a recent Appeal Board case, the Appeal Board assessed the security implications of an applicant's involvement in a form of prostitution overseas as follows:

[He and his friend] each dated a couple of different women on this trip, they paid their bar fees, went to dinner and/ or dancing, and engaged in consensual sexual activity. [He] engaged in sex with at least one to two women while on this trip. When they pay the bar fee, it does not mean they are paying for sex, sex is never discussed, and the women are not obligated to sleep with the men who pay their bar fee to take them out. Prostitution is illegal in Thailand. The women that they engaged in sexual activity with were adults, and it was always consensual sex (no other details recalled).

\* \* \*

Applicant's contention that he is not participating in prostitution brings to mind a Latin phrase, "*res ipsa loquitur*," i.e., the thing speaks for itself. He paid money to engage in casual, sexual encounters. Despite his claim to the contrary, the routine practice of paying a fee to remove random women from bars and then later on that same occasion engage in sexual activity with them is a form of prostitution. In the above indented quote, Applicant admitted that prostitution is illegal in Thailand. Disqualifying Condition 13(a) was established.

Additionally, Applicant's conduct is at the very least high-risk sexual behavior that calls into question his judgment. Such behavior establishes disqualifying conditions under Guideline E that address conduct involving questionable judgment.

ISCR Case No. 16-03690 at 3 (App. Bd. Aug. 15, 2018) (footnotes omitted).

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the



applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶ 14 lists conditions that could mitigate security concerns:

- (a) the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;
- (b) the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or 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.

AG ¶ 14(a) does not apply because Applicant sought the services of prostitutes when he was in his 50s. AG ¶ 14(b) partially applies because his involvement with prostitutes was not recent as it ended in 2014. It was somewhat frequent as it occurred five or six times. It occurred under unusual circumstances as he was on close-contact covert overseas missions acting without back-up support. He was required to deceive others to maintain his cover identity. He will not go on such missions in the future. He was taking a large amount of AndroGel, and he is no longer taking so much of this medication. However, his behavior with the prostitutes continues to cast doubt on his current reliability, trustworthiness, and judgment for the reasons cited in the next paragraph.

The SOR alleges from about 2012 to 2014, while granted access to classified information, Applicant solicited prostitutes about six times. The SOR does not allege that: (1) Applicant did more than just solicit prostitutes, he engaged in sexual intercourse with prostitutes five or six times in exchange for about \$100 on each occasion; (2) the sexual intercourse with prostitutes occurred in a foreign country; (3) Applicant was on a covert mission in which he knew he was supposed to avoid non-mission-related personal contact with foreign nationals; (4) Applicant did not have back-up security from AGA while he was in the bordellos; (5) AGA was unaware of his contacts with prostitutes at the time they occurred; (6) if something bad happened to him in the bordellos, AGA would not have

known how or where to come to his aid; (7) Applicant had SCI access at the time he was involved with prostitutes; (8) Applicant did not disclose his involvement with the prostitutes until 2017 during a pre-polygraph interview; (9) Applicant did not know whether the prostitutes were coerced or induced by fraud to be prostitutes; (10) Applicant did not know whether foreign intelligence or criminals were involved with the bordellos; and (11) Applicant did not disclose his involvement with prostitutes to his wife and children because of embarrassment. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). I limited my consideration of these 11 issues to the five purposes listed above.

AG ¶ 14(c) does not fully apply because Applicant is too embarrassed to disclose the information about his involvement with prostitutes to his spouse and children. Applicant receives some mitigation credit under AG ¶ 14(c) because he disclosed the information about his involvement with prostitutes to security officials in 2017, and he promised to disclose the information to his family if anyone attempted to use the information to coerce classified information from him. Absent his disclosure, it is unlikely that his involvement with prostitutes would have been discovered.

AG ¶ 14(d) partially applies. Applicant's sexual behavior with prostitutes was strictly private and discrete. However, Applicant did not meet his burden of proving the prostitutes' sexual intercourse with him was consensual. Appellant did not establish that the women freely chose to be prostitutes without being coerced or fraudulently induced to be prostitutes by the owners of the bordellos.

AG ¶ 14(e) partially applies. Applicant received three therapy counseling sessions to address his judgment and decision making. He does not receive full credit because he did not provide recommendations for future therapy and a favorable prognosis from a qualified mental-health professional indicating the behavior is readily controllable with treatment.

The 11 non-SOR features of his involvement with prostitutes overseas listed previously outweigh the mitigating information. Applicant was on a highly classified covert mission. Applicant repeatedly violated mission restrictions against personal contacts. He did not know the nationalities of the women he paid for sex. He did not establish the

bordellos were unconnected to criminals or a foreign intelligence service. He did not disclose his involvement with prostitutes until 2017 to AGA even though he knew he was supposed to timely disclose mission anomalies. Taking responsibility for one's conduct is often considered the first step on the road to rehabilitation, and Applicant has taken that first step; however, more time must pass without actions of security concern before reinstatement of his security clearance will be warranted. Guideline D security concerns are not mitigated at this time.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

AG ¶ 16 includes two conditions that could raise a security concern and may be disqualifying include:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . . (3) a pattern of dishonesty or rule violations; 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.

SOR ¶¶ 1.a and 2.a allege and Applicant admitted that from about 2012 to 2014, while granted access to classified information, he solicited prostitutes about six times. AG ¶¶ 16(d) and 16(e) are established.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

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

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

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant's delay in reporting his involvement with prostitutes to AGA violates security and mission rules. As discussed in the previous section, Applicant did not want information about his involvement with prostitutes to be disclosed to his spouse and children. None of the mitigating conditions fully apply to Applicant's conduct as described in the sexual behavior section, *supra*. Personal conduct security concerns are not mitigated at this time.

### **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(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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guidelines D and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 58-year-old senior engineer, who has been employed by his current employer for 19 years. He held a security clearance with access to SCI from 1986 to 2017. He wants his security clearance to be reinstated to enable him to assist with problem-solving in the intelligence community and to enable him to make important contributions to national security. He has been married for 29 years, and he has three children. Applicant has a bachelor’s degree and two master’s degrees.

Applicant presented some important mitigating information. He has more than 30 years of generally outstanding employment in the intelligence sector. He received letters of commendation from President Clinton, the Director of AGA, and the Deputy Director of AGA as well as citations, certificates of distinction, commendations, and praise for his courage, attention to detail, and technical expertise in a field operation. Aside from his activities with prostitutes from 2012 to 2014, Applicant had a flawless record. He accepted numerous missions which entailed a risk of capture and death. The circumstances of his life from 2012 to 2014 were anomalous and will not recur, and he will not be involved with prostitutes in the future. He never improperly disclosed classified information. He described himself as an honest, trustworthy person, and he noted that he has previously reported incidents or mistakes that reflected poorly on himself and others. His loyalty and dedication to the United States are impeccable.

The weight of the evidence is against access to classified information for Applicant at this time. From about 2012 to 2014, while granted access to classified information and SCI, Applicant engaged in sexual intercourse with prostitutes five or six times in exchange for about \$100 on each occasion. The sexual intercourse with prostitutes occurred in a foreign country. He was on a covert mission in which he knew he was supposed to avoid non-mission-related personal contact with foreign nationals. He did not have back-up security while he was in the bordellos. He did not establish the bordellos were unconnected to criminals or a foreign intelligence service. He did not establish the women he paid for sex in the bordellos were engaging in prostitute without being coerced or induced by fraud to be prostitutes. AGA was unaware of his contacts with prostitutes at the times they occurred. If something bad happened to him in the bordellos, AGA would not have known how to come to his aid. AGA may have had to compromise AGA’s intelligence activity by seeking help from foreign law enforcement to rescue or assist Applicant.

Applicant did not disclose his involvement with the prostitutes until 2017 during a pre-polygraph interview. His delay in reporting this conduct violated security and

operational rules. Applicant did not disclose his involvement with prostitutes to his wife and children because of embarrassment. Applicant's conduct with prostitutes from about 2012 to 2014 was "at the very least high-risk sexual behavior that calls into question his judgment. Such behavior establishes disqualifying conditions under Guideline E that address conduct involving questionable judgment." ISCR Case No. 16-03690 at 3 (App. Bd. Aug. 15, 2018).

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Unmitigated sexual behavior and personal conduct security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time.

### **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
Subparagraph 2.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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge