



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



In the matter of: )  
)  
) ISCR Case No. 19-01517  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

08/04/2020

**Decision**

HEINY, Claude, Administrative Judge:

Applicant’s amended statement of reasons (SOR) alleged that he owed \$112,000 for unpaid federal taxes for tax years 2014 through 2016, and that he provided over \$660,000 to women for sexual intimacy. He mitigated the security concerns under Guideline F, financial considerations. He denies the risk of recurrence of providing money for intimacy, but concerns persist about his personal conduct. Clearance is denied.

**Statement of the Case**

On July 26, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued an SOR to Applicant, detailing the security concerns under Guideline F, financial considerations, under which it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DoD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DoD on June 8, 2017.

On August 24, 2019, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On December 12, 2019, DOHA issued a Notice of Hearing scheduling a hearing that was conducted on January 16, 2020.

At the conclusion of the evidence presentation, Department Counsel moved to amend the SOR to conform with the evidence admitted, under under ¶ E3.1.17 of the Directive, to which Applicant had no objection. (Tr. 80) The SOR was amended to read:

Paragraph 2, Guideline E – 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.

Available information raising this concern shows that:

a. In the late 1990s and again from 2012 through at least 2019, you paid various women specifically for sexual acts and services. (Tr. 80)

Four Government exhibits (Ex. 1 – 4) and nine Applicant exhibits (Ex. A – I) were admitted into evidence without objection. The record was held open following the hearing to allow Applicant to submit additional documentation. On March 9, 2020, four documents were received and admitted into evidence without objection as Ex. J – M. Applicant testified, as reflected in a transcript (Tr.) received on January 29, 2020.

### **Findings of Fact**

Applicant is a 54-year-old software engineer who has been employed by a defense contractor since October 2014 when he changed from being a contractor for the company to being a full-time permanent employee. (Tr. 10) He was unemployed from March 2014 through September 2014. (Ex. 2) Applicant received a congratulation letter for his 30 years of service with his company. (Ex. B) He seeks to retain a security clearance. (Tr. 6) He is widowed. (Tr. 14) He has not served in the military. His annual salary for 2019, was approximately \$130,000. (Ex. A, Tr. 70)

Applicant took his credit card accounts to unsafe levels, cashed out his 401(k) retirement plan of approximately \$300,000, and sold investments worth \$83,242 to provide money to women he met at gentlemen's clubs. (Tr. 14, Tr. 30, Ex. K and L) He acknowledged his poor judgment for these actions. (Tr. 14) Applicant owed \$112,280 in federal income taxes for tax years 2014 through 2016. (Ex. 2)

There are no credit card accounts currently of concern. On Applicant's May 2017 Questionnaires for Investigations Processing (e-QIP), he stated he had paid off two credit

card accounts and two credit union accounts totaling \$70,637. (Ex. 1) He asserted he had entered into a debt-relief program to successfully pay off all of his accounts. (Ex. 1) Applicant's July 2017 and March 2019 credit reports indicate Applicant has no past due accounts. (Ex. 3, 4)

In Applicant's May 2017 e-QIP, he indicated he had not filed or paid his federal income taxes for tax years 2014 and 2015. (Ex. 1) He stated:

I filed my 2014 taxes as required, requesting and receiving an extension. At the due date of my extension I made a payment of less than the complete amount due as, after cashing out my 401k, I ended up not having the funds to pay the additional taxes due to early withdrawal penalties. Note: the 401k funds were withdrawn largely as a result of my having been laid off in February of 2014 and I wanted to pay off existing credit card debt. I was not contacted to pay the remainder of the 2014 taxes and, after hiring [tax firm] to assist in reaching a settlement with both the 2015 and 2014 taxes, discovered there had been an identity theft and the IRS had no record of my filing. Thankfully, the record of payments, insufficient though they were, was found.

On Applicant's e-QIP he stated about tax year 2015, "I had insufficient funds to pay the balanced owed at the conclusion of my extension. The amount owed was higher than expected due to the money saved by my credit card settlements being charged as income." (Ex. 1) He listing owing federal income taxes of \$36,385 for tax year 2015 and estimated he owed \$50,000 for tax year 2014. (Ex. 1) Available federal income tax information shows the following (in U.S. dollars):

	Adjusted Gross Income	Federal tax liability	Federal tax withheld	Tax paid	Penalty and interest	Refund	Balance due	Yet to be paid*
2013	12,2516	25,024	24,519	505**	0		0	
2014	Unavailable	60,487	***					60,487
2015	15,6476	43,999	10,813	34,211	11,309		45,521	45,521
2016	80,894	13,403	10,747		697			3,580
2017	91,279	15,958	14,758	1,213	0		0	0
2018	122,606	20,835	22,164			****		

\*Amount of federal tax due as of July 2019. (Ex. 1)

\*\* Applicant paid \$505 when he filed his return, which was the amount of tax owing for tax year 2013.

\*\*\* In an Internal Revenue Service (IRS) July 2019 letter, it states the IRS was not able to process Applicant's transcript request for tax year 2014. (Ex. 1) The June 2019

installment agreement with the IRS lists \$60,487 owed for tax year 2014, and \$112,280 in total federal income taxes due for tax years 2014 through tax year 2016. (Ex. 2)

\*\*\*\* The \$1,329 tax refund for tax year 2018 was applied to Applicant's tax balance for tax year 2015. (Ex. I)

On July 5, 2019, Applicant completed his responses to written interrogatories in which he stated he had a tax preparer file an extension for his 2014 federal income tax return (Ex. 2, Tr. 52) Applicant believed his tax preparer would file his return within the extended deadline. His tax preparer never contacted him again to inform him how much was owed for tax year 2014. (Tr. 53) The 2014 federal income tax return was not filed until 2017. (Tr. 33) Applicant did not file his 2015 tax return until December 2016. (Ex. 2, Tr.55) He lives in a state that does not have a state income tax obligation.

On November 2018, Applicant made an unsworn declaration during an enhanced subject interview. (Ex. 2) He stated he had hired a tax firm to help him address his past-due federal taxes. (Tr. 20) The firm was attempting to negotiate a reduction of his tax burden. (Tr. 62) There was to be a hearing with the IRS at which the tax firm was to represent his interests before the IRS. (Tr. 62) In March 2017, Applicant made an initial payment of \$6,000 to a tax firm to help him with his federal taxes. (Ex. D) He then started making \$600 monthly payments to the firm. Between March 2017 and January 2020, he paid the tax firm \$25,200 for assistance in obtaining a reduction of this federal tax delinquency. (Ex. D, J) As of March 2020, the attempt was unsuccessful, and he ended the \$600 monthly payment to the tax firm. (Ex. J)

Applicant had entered into an installment agreement with the IRS and paid \$10,000 on April 15, 2015, on his 2014 federal income tax obligation. On October 20, 2015, he made a payment of \$100 on his 2014 tax obligation. (Ex. F) In 2016, he made two additional payments totaling \$121 to address his 2015 federal tax obligation. (Ex. F) In May 2019, entered into a repayment agreement with the IRS agreeing to make monthly payments of \$1,387 to repay past-due taxes with his first payment due June 28, 2019. (Ex. 2, Tr. 20) His monthly installment payments to the IRS remain timely and uninterrupted. (Ex. J., Tr. 60) Between March 16, 2016, and February 24, 2019, he made 11 payments totaling \$13,696 to the IRS toward his 2014, 2015, and 2017 tax year taxes. (Ex. F, M)

In 1997-1998, Applicant provided \$6,000 to a woman not further identified in the record. In 2000, he provided \$60,000 to another woman SA. (Tr. 38) Those funds were not repaid. (Tr. 39) He had a sexual relationship with SA, but he asserts the money provided was not payment for a sexual relationship or sexual conduct. (Tr. 43) He denied having had sexual intercourse with the other woman, but had "intimate relations," which were not further explained in the record. (Tr. 43)

During Applicant's November 2018 subject interview, he was questioned about \$28,725 in payments he had made to three women. He acknowledges he used poor judgment in providing money to women (AB, LW, and JS) that he met in gentlemen's

clubs. (Ex. 2, Tr. 36) He started lending money to these individuals starting in 2010. (Tr. 35) When he provided the money, he believed AB would not repay the money he gave her. He believed LW and JS would repay him. (Ex. 2) He stated he provided money to LW to help her with her Lupus treatment including nursing care and medical costs. As of November 2018, he was still providing monies to help LW with her medical expenses. (Ex. 2) He was intimate with some, but not all of the women that he provided with money. (Tr. 40)

Applicant met LW at a gentleman's club, where she was a dancer. (Tr. 36) On June 14, 2012, a loan agreement was written between Applicant and LW. (Ex. C) However, the agreement was never signed not notarized by LW. The loan document listed the collateral provided and the 16.99% interest rate, but did not list the amount of the loan or the purpose of the loan. (Ex. C) The loan agreement gave Applicant the assurance and belief that the money provided would ultimately be repaid. (Tr. 15) He had known LW for two years at the time the contract was written and in 2012, they lived together for approximately four months. (Tr. 23) In total, he provided her with \$350,000. (Tr. 24) He believes he will be repaid the funds in May or June 2020. (Tr. 25) She anticipated receiving funds from an automobile accident. (Tr. 25) Applicant still maintains contact with LW. He had received a text message from LW the day of the hearing. (Tr. 43)

Applicant met JS at the same gentleman's club where she was and LW were both dancers. (Tr. 36) He stopped going to gentleman's clubs in 2012, because he had no more money. (Tr. 46) He knew JS approximately three years and he provided her money over a course of time. (Tr. 27) He provided her approximately \$177,000, believing the money would be repaid from an insurance payoff she was expecting. (Tr. 29) The money he gave JS was used by her for child care and living expenses. (Tr. 29) He last saw JS six to eight months ago. (Tr. 29) He now believes the funds will not be repaid and that if she received an insurance payout, the money has been spent. (Tr. 30) He also provided JS's sister \$64,000. (Tr. 33)

Applicant knew AB approximately three years when he loaned her money. (Tr. 27) AB worked as a waitress at the same gentleman's club, where JS and MW were dancers. (Tr. 36) Applicant and AB were friends and he provided her approximately \$10,000 over a period of time, believing the money would not be repaid. (Tr. 27, 47) The money was provided in a number of transactions with her using the money for child care, medical expenses, and living expenses. (Tr. 27-28) He last saw her eight months ago. (Tr. 28)

Applicant asserts he has known the woman he provided the money to for more than ten years. Over that period he had intimacy with them less than ten times. (Ex. J) The most recent contact he had with any of the individuals was in June 2019. (Ex. J)

Three of the women: ML, AB, and JS performed sexual acts on Applicant after which he provided them with money. (Tr. 40) However, he initially asserted the money provided was not payment for sexual acts. (Tr. 41) He then stated the money was for the intimate acts but not for sexual intercourse. (Tr. 41) He acknowledged the women would come to his location, a sexual act (not intercourse) would take place, money was

exchanged, and the women would leave. (Tr. 42) He then agreed the money was for sexual services. (Tr. 43) He was last intimate with ML in 2014, with AB two years ago, and with JS six months ago. (Tr. 45, 47, 48, 82) During 2018 and 2019, Applicant provided no money to any women other than ML. (Tr. 81) During that time period, he gave ML \$200 on one occasion and \$500 on another. (Tr. 82) During those two years, he had less than ten contact with the women. (Tr. 83)

Applicant stated he provided the financial assistance expecting in good faith to be paid back. Three of the individuals were waiting for legal settlements to receive delinquent child support payments, funds from being injured in an automobile accident, and settlement on the death of a spouse. (Tr. 20) He asserted about his financial issues,

The needs of my friends, couple with their delayed repayments, forced me to use credit cards to an unsafe level. The increased credit card usage and accompanying bills resulted in my borrowing against my 401(k) and selling my investments. (Tr. 20)

After Applicant was laid off from his job in March 2014, he thought liquidating his 401(k) retirement fund was a reasonable course of action. (Tr. 21) He feared the impending loss of income when his severance pay expired, and with the assurance of imminent repayment of the funds provided his friends, he believed he could repay the funds withdrawn from his 401(k). (Tr. 21) He had approximately \$300,000 in his 401(k) at the time he liquidated it. (Tr. 30)

As Applicant's severance pay was ending, he was rehired as a contractor by the company from which he had been laid off. However, his new pay when rehired was only two-thirds of his previous pay. (Tr. 21) With reduced income and high credit card bills, he entered into a high-interest loan in a credit card resettlement agreement in 2016. (Tr. 20, 64) Through the credit relief service he consolidated his credit-card accounts and obtained a \$31,000 personal loan with a 21% interest rate to address his credit-card debts. (Tr. 66, 67) He says payment on the loan will continue for many more years. (Tr. 20) His budget includes a monthly amount of \$1,036 to a financial company. (Ex. H) The company lists itself as a financial network helping people overcome debt to achieve financial stability through their proven solutions for debt settlement, mortgage shopping, and personal loans. All services provided by the financial company ended with he obtained the loan. (Tr. 67) He no longer makes payment to the credit relief service, but still makes timely monthly payments on the loan. (Tr. 66)

Applicant does not appear to be living above his means. His monthly income is \$6,638, and his budget showed expenses of \$6,073, which left \$565 of disposable income. (Ex. H) The budget as presented included monthly payments of \$600 to the tax firm, \$1,387 to the IRS, and \$1,036 to the debt relief program. (Ex. H) It also included an additional \$3,600 for utilities, insurance, rent, food, automobile payment, food, clothing, and credit card payment. (Ex. H) He drives a 2009 automobile. (Tr. 76) As previously stated he no longer makes the \$600 monthly payments to the tax firm, which increases his monthly disposable income to \$1,165.

## Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination of the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant failed to file his 2014 and 2015 income tax returns in a timely manner and owed approximately \$112,000 in federal income taxes for tax years 2014 through 2016. AG ¶ 19 includes four disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" "(b) unwillingness to satisfy debts regardless of the ability to do so;" "(c) a history of not meeting financial obligations;" and (f) failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required."

The Government's evidence and Applicant's own admissions raise security concerns under AG ¶¶ 19(a), 19(b), 19(c), and 19(f). The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005)). Applicant has the burden of presenting evidence of explanation, extenuation, or mitigation to overcome the financial considerations security concerns.



The 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).

Even though a willful failure to timely file a completed federal income tax return is a misdemeanor-level criminal offense under federal law, for the purposes of this decision, I am not weighing Applicant's failure to timely file his federal income tax returns for 2014 and 2015 against him as a federal crime. The failure to timely file federal tax returns has security implications for the reasons noted by the Appeal Board:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns*. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

The Appeal Board ruled that "even in instances where an "[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant's security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility" including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016).

Failing to timely file tax returns indicates an individual fails to demonstrate the degree of good judgment and reliability required of persons granted access to classified information. Even so, Applicant's failure to timely file returns for 2014 and 2015 was not alleged in the SOR, so it cannot be considered for disqualification purposes. However, Applicant's federal tax delinquency, which includes penalties for late filing or nonpayment, for tax years 2014 and 2015 establishes the aforesaid disqualifying conditions.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

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

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

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

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant owed delinquent income taxes totaling approximately \$112,000 for tax years 2014 through 2016.

The mitigating conditions listed in AG ¶ 20(a) does not apply because the behavior did not happen long ago. Even though there were only two years of non-filing of returns a concern remains because the full amount of the taxes have yet to be paid. AG ¶ 20(b) does not apply. The conditions that resulted in the financial problem were partially caused by factors beyond Applicant's control. He was out of work for several months in 2014, but

when his severance pay was ending, he decided to cash in his 401(k) account, cash in other investments, and use his credit cards unwisely. He was not victimized by predatory lending practices, but he was clearly victimized by women friends of his to whom he lent money anticipating some of it would be returned. The money was not returned.

AG ¶ 20(c) does not apply because there is no evidence Applicant has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service. However, there are clear indications his tax problem is being resolved or is under control. AG ¶ 20(d) does apply. He obtained a loan and addressed his credit card and credit union accounts. However, the cancellation of his credit debt resulted in additional taxable income, which led to an increase in his tax liability. He has a high monthly payment on the loan, but he is current on the loan. He initiated a good-faith effort to repay those accounts or otherwise resolve debts. AG ¶ 20(e) does not apply because Applicant is not disputing the legitimacy of any of his debts.

In this instance AG ¶ 20(g) applies because Applicant has filed all tax returns and has reached a repayment agreement with the IRS for his delinquent taxes. His installment payments remain timely and uninterrupted since June 2019. The current balance of Applicant's tax debt is unknown. It is known that he has made more than \$14,000 in payments to the IRS since June 2019. Not knowing the amount of interest being charged by the IRS, it is not possible to estimate the current balance owed. The period of payments is sufficient for me to believe he will continue making his required payments until the repayment agreement is completed. With the application of AG ¶ 20(g), under the circumstances, he has mitigated the financial considerations security concerns.

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

Applicant provided money to a number of women and received acts of sexual intimacy from some of them. Not all of the more than \$660,000 was provided for sexual intimacy. Some funds were provided to women he considered friends to help them with their medical, child care, and other living expenses. Some of the funds were provided with the expectation of repayment when two of the women received reimbursement from lawsuits in which they were engaged. His extremely poor judgment establishes the security concerns under AG ¶ 15, and support "a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to

comply with rules and regulations,” as contemplated in disqualifying condition AG ¶¶16(d) and 16(e), which state:

(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.

(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.

Applicant has the burden of establishing one or more of the mitigating conditions under AG ¶ 17:

(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 advice of legal counsel or of a personal with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being 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 contributed to 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 activities was unwitting, 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.

None of the mitigating conditions fully apply. Applicant showed that he could be vulnerable to exploitation or duress by others who might seek to exploit his empathy or desire for personal intimacy. Although he maintains that there is no risk of recurrence of paying women for sexual intimacy, he has not had any counseling, and not enough time has passed for me to conclude that the conduct will not recur. Personal conduct security concerns are not mitigated.

### **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. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant owed approximately \$112,000 in federal tax delinquency for years 2014 through 2016. However, in May 2019, he entered into a repayment agreement with the IRS, and his payments remain timely and uninterrupted. He has repaid more than \$14,000 in accord with the repayment agreement. Applicant says he has learned from the experience and is resolved to continue with his payments.

Applicant also asserts he has learned from the experience with providing money for sexual intimacy. He used extremely poor judgment in providing money in exchange

for sexual favors to several women. His conduct in this regard is recent, and there is little indication that the behavior is safely in the past, notwithstanding that his depleted finances would make such large transfers of funds impossible in the near future.

Security clearance decisions are not intended to punish applicants for specific past conduct. The security clearance assessment is a reasonable and careful evaluation of an applicant's circumstances and whether they cast doubt upon his judgment, self-control, and other characteristics essential to protecting national security information. The Government must be able to rely on those persons granted security clearance eligibility to fulfill their responsibilities consistent with laws, regulations, and policies, and without regard to their personal interests. For the reasons discussed, Applicant has raised enough doubt in that regard to where I am unable to conclude that it is clearly consistent with the national interest to continue his eligibility for a security clearance.

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(9<sup>th</sup> Cir. 1990). 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. The issue is not simply whether all the delinquent obligations have been paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(c)) The security concerns are not mitigated over the large sums of money he provided women for sexual intimacy. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations concerns, but failed to mitigate the personal conduct concerns. His personal conduct security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted.

### **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, Financial Considerations: FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2, Personal Conduct: 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 Applicant a security clearance. Eligibility for access to classified information is denied.

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CLAUDE R. HEINY II  
Administrative Judge