



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-02470  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Kent, Esq., Department Counsel  
For Applicant: Leon J. Schachter, Esq.

04/27/2021

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the personal conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On February 3, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, personal conduct. Applicant responded to the SOR on March 5, 2020, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on December 11, 2020, and reassigned to me on February 24, 2021.

The hearing was convened as scheduled on April 7, 2020. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection.

## Findings of Fact

Applicant is a 45-year-old employee of a defense contractor. He has worked for his current employer since 2005. He seeks to retain a security clearance, which he has held since about 2005. He earned a bachelor's degree in 1998. He is married with two children. (Transcript (Tr.) at 13-14, 21; Applicant's response to SOR; GE 1; AE A)

Applicant traveled to the Dominican Republic with male friends on three occasions between April 2013 and September 2014 for what were essentially extended bachelor parties. On each trip, he solicited the services of prostitutes and engaged in sexual intercourse and oral sex with the prostitutes for money. (Tr. at 16-19, 21-27; Applicant's response to SOR; GE 2, 3)

Applicant revealed his involvement with prostitutes when he was interviewed in conjunction with a polygraph for his security clearance in September 2014, about a week after he returned from his last trip to the Dominican Republic. He eventually told his wife while they were going through couple's counseling in about 2018. (Tr. at 18, 27-28; Applicant's response to SOR; GE 2, 3; AE D)

Applicant is remorseful for his conduct. He credibly testified that he has not been with a prostitute since the September 2014 trip, and he will never do so again. He and his wife have worked through their difficulties and have a strong relationship. He would not risk his marriage, family, security clearance, and job by engaging in such conduct in the future. Many of the important people in his life, including his wife and employer, are aware of what he did. He would reveal his conduct to anyone else rather than succumb to blackmail or coercion. (Tr. at 17-21, 29-31, 34, 36; Applicant's response to SOR; AE C, D)

Applicant volunteers in his community and coaches youth sports. He called a witness, and he submitted documents and letters attesting to his excellent job performance and sound moral character. He is praised for his honesty, loyalty, patriotism, reliability, judgment, work ethic, trustworthiness, dedication, and integrity. (Tr. at 35-37; AE C)

## Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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

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

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

## **Analysis**

### **Guideline E, Personal Conduct**

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified 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 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

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

(2) while in another country, engaging in any activity that is illegal in that country;

(3) while in another country, engaging in any activity that, while legal there, is illegal in the United States.

While on trips to the Dominican Republic, Applicant engaged in sexual intercourse and oral sex with prostitutes for money. That conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

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

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

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

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

Applicant revealed his involvement with prostitutes when he was interviewed in conjunction with a polygraph for his security clearance in September 2014, about a week after he returned from his last trip to the Dominican Republic. Applicant's conduct occurred more than six years ago. He is remorseful and pledges the conduct will not be repeated. Most of the important people in his life, including his wife and employer, are aware of what he did. He would reveal his conduct to anyone else rather than succumb to blackmail or coercion. He presented a strong character case. I find the conduct is unlikely to recur, and it no longer casts doubt on Applicant's reliability, trustworthiness, or good judgment. AG ¶¶ 17(c), 17(d), and 17(e) are applicable. Personal conduct security concerns are 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline E in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the personal conduct security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline E:	For Applicant
Subparagraph 1.a:	For Applicant

## **Conclusion**

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge