



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



In the matter of:)	
)	
)	ISCR Case No. 20-02818
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre Gregorian, Esq., Department Counsel
For Applicant: Jerald Washington, Esq.

02/02/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Guideline E, personal conduct security concerns and Guideline B, foreign influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 29, 2020, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct and Guideline B, foreign influence. The action was taken 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) effective on June 8, 2017.

Applicant answered the SOR on April 8, 2021, and requested a hearing before an administrative judge. The case was assigned to me on December 1, 2021. After coordinating with Applicant's attorney, the Defense Office of Hearings and Appeals

(DOHA) issued a notice of hearing on December 10, 2021, scheduling the hearing for January 10, 2022, via Microsoft Teams. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 6. Applicant testified and offered Applicant Exhibits (AE) A through H. There were no objections and all exhibits were admitted into evidence. DOHA received the hearing transcript on January 19, 2022.

Department Counsel requested that I take administrative notice of certain facts about the People's Republic of China (China) (Hearing Exhibit I). Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is the significant threat of espionage, cyber-espionage, and cyber-attack threats to the United States. Also noted is the exploitation of Chinese citizens or persons with family ties to China to gain insider access to military and defense contract secrets; economic espionage; and the significant ongoing human rights problems in China.

Findings of Fact

Applicant denied all of the SOR allegations. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. He was born in Hong Kong and immigrated to the United States in 1997. He became a naturalized citizen in 2003. He never married and has no children. He earned a high school equivalency diploma and an associate's degree. He has worked for his state's prison system from 2006 to 2013 and again from 2015 to the present. Applicant is a prospective government contract employee. (Transcript (Tr.) 17-19; 69-72, 75; GE 1; AE E, F)

Applicant served in the Army Reserve from 2005 to 2013. He deployed to Iraq from 2007 to 2008, in a support role. He was on active duty from 2013 to 2014. Applicant completed a security clearance application (SCA) in May 2018. Section 15 asked if in the past seven years he had been subject to a court-martial or other disciplinary procedure under the Uniform Code of Military Justice (UCMJ) such as an Article 15. Applicant answered "no." In 2013, Applicant received a UCMJ Article 15 from his command for sexual harassment and violating the fraternization policy. He was reduced in rank. He was discharged from the Army for unsatisfactory performance. He received an honorable discharge. (Tr. 17-24, 28-32, 71, 97-103; GE 5; AE B, H)

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes. It may be considered when making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

Applicant was interviewed by a government investigator in June 2018. During the interview he disclosed Ms. M as a foreign contact. He had received an unsolicited email from her in 2013, and he disclosed to the investigator that they were in a romantic online relationship until 2014. They never met in person or had video chats. They exchanged photographs. After a few months, she told him her father had been killed and her uncle

was trying to kill her to get an inheritance. She said she was hiding in a refugee camp under the local ministries protection. She had a lawyer who was helping her with her refugee status, but needed money so she could leave the country (Togo). Applicant agreed to help her and took out two loans. He told the investigator that he sent her money via MoneyGrams. He said that he never sent less than \$300 or more than \$5,000 in one transaction. All of the money was sent to her lawyer in Togo. He sent money until he was no longer able to do so and told her she would have to find another way. After that, Applicant did not hear from Ms. M for several months. When she did contact him, she said she had moved to Dubai, United Arab Emirates, with a man she did not want to be with, and her online access was being restricted. Applicant said he had not had further contact with her since that last email. (Tr. 105-120; GE 2)

Applicant completed government interrogatories in November 2020. In them, he stated that after checking his email, he confirmed his last contact with Ms. M was in March 2017. He said she was a refugee, but did not know her country of citizenship. He stated that between 2015 and 2017, he provided her money to help her. During his hearing, he stated he could not recall how many times he sent Ms. M money. He said the largest amount he sent her was a couple of hundred dollars, but also confirmed he took two loans out for \$3,000 and \$1,500 and sent all of this money to her. He confirmed the approximate total he sent to her was \$7,000 and when he could not afford to send anymore, she ceased contact. He testified that he became a "little suspicious" after she moved to Dubai, but he believed that she had been a target so she had to maintain a low profile so she would not get killed. He initially stated that he expected to receive \$500,000 from her as a reward for helping, later he contradicted himself, saying he did not expect to receive the reward from her. He testified this scenario made him more skeptical and aware that he had to confirm information about someone who contacted him in the future. He no longer believes her story. Applicant provided contradictory testimony and was not credible. (Tr. 31-38, 105-120; GE 2)

In early 2018, Applicant received another unsolicited email from a woman, Ms. H. He describes her as his girlfriend. She sent him nude photos numerous times. He sent her nude photos about six times. He also sent her videos of him nude and performing sexual acts. He said he sent between 10 and 20 videos. She did not send him videos. They have never met in person. Applicant was not concerned about sending this type of content to her then or now. (Tr. 38-42, 121-128)

Ms. H told Applicant that she needed to send him money because she was having difficulty getting her inheritance. She said she would send him money from her clients and asked him to open bank accounts, deposit the money, and then he should send money orders to two people he did not know. When asked if he thought Ms. H was using him for money laundering, he wavered back and forth in his response. (Tr. 47-56, 129-140)

Applicant testified that he used two accounts for her money. He was blocked by MoneyGram and Western Union, so the money was sent through Bitcoin. He testified that sometimes he deposited money from an unknown source. He sent her this money and

sometimes he sent his own money. He said he did numerous transactions. He estimated he deposited and then transferred back to Ms. H about a total of \$10,000 of her funds. He sent her about \$2,000 of his own money. At the time he completed his interrogatories in November 2020, he was still sending her funds to cover her living expenses. He sent this money by Bitcoin. When asked when was the last time he sent money to Ms. H, he said he sent her \$1,500 the preceding week, on January 5, 2022, days before his hearing. His last contact was on January 7, 2022. This money was in addition to the previous \$2,000 he sent to her. He said he sent her money to help her with immigration issues. He was not initially suspicious of her activity and believed her requests were legitimate. However, after his repeated requests to her to provide him with documents and her failure to do so, he now believes her actions were not legitimate. He said he has now cut off communication with her, by deleting her account. (Tr. 39-40, 46-56, 129)

Applicant testified that when Ms. H first contacted him, she lived in a neighboring state, but they did not visit each other because he did not have the time to take off from work, or the money to travel, and his vehicle was unreliable. The money he sent went to her lawyer, who is in Nigeria. When asked if he was aware that MoneyGram and Western Union likely blocked his transactions because they suspected fraud, he said he understood, but he had the names of the people he was to send money to and believed them to be legitimate at the time. He took precautions and requested Ms. H provide him a copy of her passport, which she did, so he believed she was real. He also requested they have a video chat. They had one, and he was able to verify the photo on the passport was the same person in the video chat. He said Ms. H is now living in Nigeria and she told Applicant that she acquired a new passport because her original one was confiscated by the hotel where she was living. Applicant provided maps of the location of the hotel. (Tr. 41-56, 144-148; GE 2)

Applicant provided a copy of the passport Ms. H gave him. He wanted her to provide him a copy to prove she was who she claimed. A review of the passport clearly shows it is fraudulent. The name at the top of the passport is different than the name at the bottom. It also has two different passport numbers. Its expiration date does not reflect the correct ten-year period. Most glaring is that the "United States of America" is spelled wrong (State is used vice States). Applicant did not seem to understand that the scenarios he participated in with Ms. M and Ms. H were scams. He did not believe he had been manipulated. He testified that in the future he will be more skeptical, and he no longer will accept unsolicited emails. He did not believe he could be exploited in the future because he is concerned about the criminal consequences. (Tr. 56-57, 68-69, 148-153; GE 2; Answer to SOR)

In February 2020, at the request of the Government, Applicant participated in a psychological evaluation. During the interview process, Applicant related the information noted above about Ms. M and Ms. H to the licensed psychologist. The psychologist noted that when she asked Applicant whether his association with unknown individuals in foreign countries who have asked for financial support could be problematic or a security risk, he stated "no." The psychologist opined: "He did not demonstrate any real insight or

recognition that these random contacts could compromise the safety and security of him personally and also his work and more global security issues.” (GE 4, 6)

During the interview with the psychologist, Applicant described an incident where he inappropriately obtained derogatory information about a supervisor, confronted her with the information, and shared it with a colleague. He did not think any of his actions were questionable or that his judgment and decision-making were potentially flawed. When asked at his hearing about this incident, he explained that he learned that his supervisor had been charged with a misdemeanor as a juvenile. He retrieved the documents from a copy machine, viewed them, and shared them. Applicant justified his conduct stating that he expected his supervisor to be “clear of everything.” (Tr. 161) He said he did it because he has high expectations and standards for his supervisor. He admitted he did not have the authority to view the documents or to disclose the information to anyone, which he did. He did it because he wanted to know what his supervisor had done. He had concerns about her being selected to supervise the team. (Tr. 58-67, 154-166; GE 4)

Applicant also told the psychologist that if Ms. H had a driver’s license he would access his state’s database for his personal use to check her status. Through his job, Applicant has access to the state’s database for driver’s licenses, but he is not authorized to use it for personal use. (Tr. 166-168; GE 4)

The psychologist noted that Applicant stated that he was likely taken advantage of by Ms. M, but did check that the photo she sent him had not been altered so he could see it was legitimate. This made him more skeptical when he was dealing with Ms. H. The psychologist noted that Applicant did not see the similarities between the two incidents. He saw the incident with Ms. M as an isolated occurrence and the one with Ms. H as different. The psychologist is concerned “about a pattern of behavior involving poor judgment and decision-making and equally if not more concerning is his apparent social naiveté and lack of insight. His perceptions of reality appear rather skewed.” (GE 4)

Applicant testified he does not believe he was manipulated or that he could be exploited. He said he stopped his contact with Ms. M because he questioned her identity, which is inconsistent with other testimony he provided. Regarding Ms. H he said that he gathered evidence about her and because he could not determine her location, he stopped all communication. It was during cross-examination that it was learned his last contact was three days before his hearing. Applicant repeatedly contradicted himself and his prior statements. In addition, he repeatedly minimized, justified, and rationalized his conduct. I did not find his testimony credible. (Tr. 144-172)

Applicant’s mother is a citizen of China and a permanent resident of the United States. She immigrated in 1999 and is 73 years old. She worked in the United States and is retired. He visits his mother about once or twice in a three-month period and talks to her every other week by phone. She has not applied for U.S. citizenship due to her language skills. She maintains a Chinese passport and has contact with her relatives in China. His mother returns to China about every two years to visit family. She stays with

Applicant's brother while there or if her sisters are traveling to Hong Kong, they will stay together. They visit their mother, Applicant's grandmother. Applicant's father is a naturalized citizen of the United States. Applicant's parents reside together in the U.S. Both are aware that Applicant has applied for a security clearance. Tr. 24-29, 79-88; AE A, C)

Applicant's brother and sister-in-law are residents and citizens of China. They have one child. His brother chose to remain in China when his parents and Applicant immigrated. His brother is a technical officer for the Chinese government. He is an engineer and does safety inspections on buildings. Applicant's brother came to the U.S. for a visit in 2003. Prior to then Applicant visited him in China in 2000 or 2001. Applicant does not know his sister-in-law's occupation or where she works. He has telephone contact with his brother about every six months. Throughout Applicant's testimony, I had concerns and doubts about his veracity and candor. (Tr. 91-96)

Applicant provided a certificate of recognition for his ten years of service to his state and a copy of his resume. (AE C, D)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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(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." 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an 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.

Section 7 of EO 10865 provides that 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

AG ¶ 15 expresses the security concerns for personal conduct:

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 following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(c) credible adverse information that is not explicitly covered under any 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 the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, considerations of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected

information; (2) any disruptive, violent, or inappropriate behavior; and (3) a pattern of dishonesty or rule violations;

(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; . . .; and

(g) association with persons involved in criminal activity.

Applicant was disciplined under Article 15 of the UCMJ while in the military for sexual harassment and violation of the fraternization policy. He was reduced in rank. He was discharged for unsatisfactory performance.

Applicant established relationships through unsolicited emails with two different women. He never met either. His contact with Ms. M began either in 2013 or 2015. She claimed she was in danger and over the course of at least two years, he sent her approximately \$7,000. When he could no longer afford to send her money, their contact ceased. He believed the woman's story because she sent him a photo.

Applicant testified the second woman is his girlfriend. They have exchanged nude photos and he has sent her numerous videos of himself performing sexual acts. He agreed to accept money from her, deposit it in his bank accounts, then transfer it back to her or others by money order. He does not believe this was likely money laundering. He sent her his own money too. He believes her story and believes he has corroborated it with what is clearly a fraudulent passport. Applicant transferred money even after his transactions were blocked by money transfer services and he was warned of potential fraud. His contact with Ms. H began in 2018, and Applicant most recently sent her money five days before his hearing and had contact with her three days before his hearing.

During a psychological evaluation, Applicant disclosed an episode where he inappropriately obtained derogatory information about his supervisor, confronted her with it, and shared it with a colleague. He also told the psychologist during his evaluation that he has access to his employer's database and expressed a willingness to access it for personal use. The above disqualifying conditions apply.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

(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; 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 or regulations.

Applicant does not grasp the gravity of his conduct. Through unsolicited emails, he established relationships with two women who told him obvious scam stories. He sent them money. He unwittingly participated in what is likely a money laundering scheme, but he still does not believe it despite transfer services blocking his account due to potential fraud, and continues to have contact with this woman, even after being provided with an obvious fraudulent passport. He does not recognize how he could be exploited by sending nude photos and sexually explicit videos of himself. He believes his conduct of inappropriately obtaining derogatory information about his supervisor, confronting her, and sharing it with a colleague, was justified because of his high expectations for his supervisor. His willingness to access his employer's database for his personal use is a concern.

Applicant's conduct is not minor or infrequent. He says he stopped communicating with Ms. H as of his last email on January 7, 2022. It is obvious she was exploiting him. Although his initial association with Ms. H may have been unwitting, he continued to maintain contact with her. Applicant did not provide evidence that he has obtained counseling or changed his behavior or that future inappropriate behavior is unlikely to recur. Applicant's conduct casts doubt on his reliability, judgment, and willingness to comply with rules and regulations. None of the mitigating conditions apply.

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest

is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(a) contact, regardless of method, 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; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

There are significant espionage concerns and ongoing human rights problems in China. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, through his mother, who is a citizen of China and travels there to visit her family, and his brother who works for the Chinese government. Applicant's personal conduct as addressed above also raises a concern of exploitation. The above disqualifying conditions have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(a) the nature of the relationships with foreign persons, the country in which these personal are located, or the positions or activities of those person 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 United States;

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

(c) contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

I considered the totality of Applicant's ties to China. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, and the country is known to conduct intelligence operations against the United States. Applicant's mother, brother, and sister-in-law have ties to China. His brother works for the Chinese government. Applicant maintains contact with them. Applicant engages in questionable conduct which creates an increased risk of vulnerability, manipulation and exploitation by China, a country that actively engages in espionage and exploits Chinese citizens or persons with family ties to China to gain insider access to sensitive and classified information. None of the mitigating conditions 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(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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and E, 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 44 years old with a significant history of engaging in questionable conduct. He failed to meet his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline E, personal conduct and Guideline B, foreign influence.

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 B:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.e:	Against Applicant
Subparagraph 2.f:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge