



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



In the matter of: )  
)  
) ISCR Case No. 19-02554  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: Brett O'Brien, Esq.

03/14/2022

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant failed to mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 13, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E (personal conduct). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on June 15 and December 14, 2020 (Answer), and she requested a hearing before an administrative judge. The case was assigned to me on April 7, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on May 7, 2021, scheduling the hearing for June 3, 2021. I convened the hearing as scheduled. (Tr. at 7)

## Procedural Rulings

At the hearing, Government Exhibits (GE) 1 and 6 and Applicant's Exhibits (AE) A through O and Q through CC were admitted without objection. AE I is a duplicate of GE 1. At Department Counsel's request, I marked a report of investigation (ROI), which summarized Applicant's July 28, 2016 interview with a background investigator, as GE 7. Department Counsel did not offer and I did not admit GE 7 in evidence. (Tr. at 12-21, 176-177, 191-192; GE 1, 6; AE A-O, Q-CC)

Applicant objected to GE 2, her November 2019 response to DOD interrogatories, on the basis that she did not adopt the ROI contained therein, a summary of her March 2019 interview with a background investigator, as an accurate representation of the information she told the investigator during that interview. I overruled Applicant's objection and admitted GE 2 in evidence. I did not give any weight to the ROI contained in GE 2, given Applicant's indication that she did not adopt this ROI. AE K is a duplicate of GE 2. (Tr. at 12-21, 176-177, 191-192; GE 2; AE K)

Applicant also objected to GE 3, 4, and 5, a June 2018 clearance decision statement issued by another government agency (AGA), and two AGA reports of polygraph examination, from December 7 and December 13, 2017, respectively, on the basis that the documents, as with the ROI in GE 2, contained mischaracterizations of information conveyed to AGA by Applicant. I overruled Applicant's objections and admitted GE 3, 4, and 5 in evidence. AE F is a duplicate of GE 3, and AE E is a duplicate of GE 4 and 5. (Tr. at 12-21, 176-177, 191-192; GE 3-5; AE E, F)

Department Counsel objected to AE P, an expert witness report, on the basis that the expert provided an opinion in his report on a matter that was an "inherently governmental function." I overruled Department Counsel's objection and admitted AE P in evidence. I gave minimal weight to AE P, given Applicant's failure to call the expert as a witness at the hearing. (Tr. at 12-21, 176-177, 191-192; AE P)

Applicant testified and called four witnesses; three of the four witnesses testified telephonically. At Applicant's request, I kept the record open until June 22, 2021, to allow her to submit additional documentation. By that date, Applicant submitted documentation, which I collectively marked as AE DD and admitted without objection. DOHA received the hearing transcript (Tr.) on June 9, 2021. (Tr. at 192-193; AE DD)

## Findings of Fact

Applicant admitted SOR allegation ¶ 1.b and denied SOR allegations ¶¶ 1.a, 1.c, 1.d, 1.e, and 1.f. She is 38 years old. She graduated from high school in 2001, and she earned a bachelor's degree in 2005 and a master's degree in 2018. As of her October 2020 SCA, she was working towards obtaining a doctorate degree from a foreign university. She married in 2011 and divorced in 2013. As of the date of the hearing, she was single and did not have any children. She has owned a home since 2017. (Answer; Tr. at 114-115, 153, 189; GE 1, 4, 6; AE A, B, I, M, Q, S, V, Y, DD)

Applicant previously held a secret clearance in 2012 and a top secret clearance in 2017. As of the date of the hearing, she was a consultant for her employer, a DOD contractor, since late 2015, and she has supported contracts under AGA through her employment. Under one such contract, Applicant underwent AGA's security clearance process, completed a security clearance application (SCA) in January 2016, and was twice polygraphed by AGA, first, on December 7 (first polygraph), and second, on December 13 (second polygraph), 2017. AGA denied her security clearance in June 2018, due to concerns involving sexual behavior, criminal conduct, and personal conduct. She appealed AGA's denial of her clearance in July 2018, and AGA's clearance denial was upheld on appeal in October 2018. (Answer; Tr. at 6, 140-150, 190; GE 1, 3, 4, 5, 6; AE E, F, G, H, L, U, DD)

In December 2018, Applicant completed another SCA as part of her acceptance as a direct commission in a U.S. military command. She disclosed the 2018 AGA denial of her clearance that was upheld on appeal. In January 2019, in support of another contract under AGA, Applicant underwent AGA's waiver process; AGA granted her a waiver in approximately August 2020; and Applicant worked on the contract under AGA for over one year. In October 2020, she completed another SCA when her employer re-nominated her for another AGA contract. She disclosed the 2018 AGA denial of her clearance that was upheld on appeal and her receipt of the February 2020 DOD SOR. As of the date of the hearing, she was still undergoing AGA's security clearance process. (Answer; Tr. at 6, 140-150, 190; GE 1; AE I, N, O, Q, U, DD)

The SOR alleged that Applicant: (1) worked as a prostitute from approximately 2004 to April 2007 (SOR ¶ 1.b); (2) engaged in an affair with a married man from approximately 2007 to 2014 (SOR ¶ 1.c); (3) married her former spouse in approximately February 2011, so that he could collect additional housing allowance from the U.S. Navy under fraudulent circumstances (SOR ¶ 1.a); and (4) joined a "sugar baby arrangement" website on around February 2015, and received approximately \$400 that Spring from someone she met through the website (SOR ¶ 1.d).

The SOR also alleged that Applicant used marijuana in 2012 and in approximately February 2014, while possessing a clearance (SOR ¶ 1.f). The SOR also alleged that Applicant falsified material facts on her January 2016 SCA, when she deliberately failed to disclose her 2012 and 2014 marijuana use and answered "No" in response to the following:

Section 23 - Illegal Use of Drugs or Drug Activity . . . Illegal Use of Drugs or Controlled Substances In the last seven (7) years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance? . . . While Possessing a Security Clearance Have you EVER illegally used or otherwise been involved with a drug or controlled substance while possessing a security clearance other than previously listed?

(SOR ¶ 1.e; GE 6)

The SOR allegations are established by Applicant's admissions in her Answer; Applicant's SCA's from 2016, 2018, and 2020; AGA's December 2017 reports from her first and second polygraphs; AGA's 2018 clearance decision statement; Applicant's July 2018 appeal of AGA's clearance denial; and Applicant's hearing testimony. (Answer; Tr. at 113-192; GE 1, 3, 4, 5, 6; AE E, F, G, I, DD)

Applicant became curious about prostitution when she attended an all-woman's college. She testified:

[W]e focused a lot on women's labor, women's economics, the roles education, businesses played in the development and empowerment of women, and just the different waves of feminism that women experience based on their socioeconomic backgrounds.

(Tr. at 115; GE 1, 3, 5, 6; AE E, F, I, Z, DD)

Applicant's curiosity led her to first experiment with prostitution in 2004, through a college classmate who was a "madam," responsible for organizing the "meetings between the client and the escorts." On this occasion, the madam told Applicant about a client; Applicant confirmed her interest; Applicant was driven to the client's house, and "I had my one hour and then I ended the night. I was driven back home." (Tr. at 115-126, 177-178, 190; GE 3, 5; AE E, F)

Applicant next experimented with prostitution in approximately late 2006 to early 2007, when she moved to state A. She testified that she was interested, "from a research perspective," with how prostitution worked in state A. Initially, she was connected with a "madam," who linked Applicant with clients on two separate occasions. She then independently advertised her sexual services at an hourly rate of \$300, and engaged in prostitution approximately 25 times until around April 2007. In the interest of safety, she always met her clients at a hotel and not her personal residence. (Tr. at 115-126, 177-178, 190-191; GE 3, 5; AE E, F)

Applicant testified that she did not disclose her 2004 and 2006 to 2007 involvement with prostitution during her 2016 interview with a background investigator or her first polygraph and the pre-test interview, because she incorrectly assumed that the timeframe was beyond the relevant seven-year scope of interest. The ROI summarizing Applicant's 2016 interview with a background investigator, marked as GE 7, is not in evidence. She also testified that she was ". . . under a lot of stress . . . very much afraid. . ." during both polygraphs, having never previously been polygraphed. She testified that the first polygraph lasted four hours and she took only one break, at her request. She did not communicate to anyone, during the first polygraph, that she felt stressed. She conveyed her stressful experience to her facility security officer (FSO) after her first polygraph was completed. She knew the polygraphs were a part of her security clearance processing with AGA. (Tr. at 115-126, 157-176, 179-187, 190; GE 3, 4, 5; AE E, F)

Applicant returned for a second polygraph because AGA told her she did not pass the lifestyle portion of the first polygraph. She disclosed her 2004 and 2006 to 2007

involvement with prostitution during her second polygraph, to include the pre-test interview. She disputed the indications contained in the second polygraph report, that: (1) she had read the first polygraph report and deemed it accurate, and (2) she was unable to successfully complete the first polygraph because she was not ready to fully discuss her involvement in the sex-work industry. She testified that: (1) she was not given a copy of the first polygraph report to read, but rather, “they just read it to me,” and (2) she would have been able to continue the first polygraph and discuss her 2004 to 2007 involvement with prostitution if she had more time, but reiterated that it was already at the four-hour mark when it concluded. In her July 2018 appeal of AGA’s clearance denial, she rebutted the indications contained in the second polygraph report that characterized her as having engaged in prostitution from 2004 to 2017. She maintained that she “. . . didn’t do the sex work the entire time.” (Tr. at 115-126, 157-176, 179-187, 190; GE 3, 4, 5; AE E, F, G, DD)

Applicant denied the indication, contained in the ROI summarizing her 2019 interview with a background investigator, that she concealed information about her past involvement with prostitution during her 2016 interview with a background investigator, because she was afraid it would affect her ability to obtain a security clearance. As previously mentioned, I do not give any weight to the ROI contained in GE 2, given Applicant’s indication that she did not adopt this ROI. Applicant also denied indicating, during her second polygraph, that she tried to compartmentalize her past involvement with prostitution because it was difficult for her to admit that she was a “whore, a sugar baby.” She compared a “sugar baby arrangement” to “going on a dating app, basically,” and stated that it is considered “dating” since the parties “enter into a relationship.” She stated that it is not illegal. She defined a “sugar baby” as:

[A] person, male or female, who engages in a relationship with a more affluent male or female. Sometimes gifts are exchanged, but it’s usually the more affluent male or female [who] would present gifts to the sugar baby.

(Tr. at 115-126, 135-136, 157-176, 178-187, 190-191; GE 2, 5; AE E, G, J, K, DD)

Through her personal advertisement for sexual services, Applicant met an individual (Man 1) in approximately April 2007 with whom she engaged in a transactional relationship for ten weeks. They then decided to explore the potential for a relationship and Applicant stopped advertising her sexual services. She initially asked Man 1 to pay her \$10,000 monthly for her services and companionship, but he declined. During the course of their relationship, Man 1 gave Applicant \$4,000 monthly from April to the summer of 2007. He then paid for the remainder of her college tuition for that spring semester and the full tuition for the following fall semester. He gave her money to help her buy a car, and he gave her approximately \$800 monthly to help her pay her rent. In 2013, she moved into a cottage adjacent to his home and paid him \$1,000 monthly in rent, reduced from the \$2,700 monthly market value. They traveled the world. He gave her numerous gifts. Applicant stated that Man 1 was her boyfriend, although she knew he was married and engaging in an extramarital affair with her at the time. She felt “enamored, happy, supported, and respected” in her relationship with him. Their relationship ended in 2015, when his wife learned about it, but they continued to have

intimate, albeit “infrequent,” sexual relations until 2017. (Tr. at 115-126, 157-175, 178-187, 190-191; GE 1, 3, 4, 5, 6; AE E, F, G, I, DD)

Applicant testified that she did not disclose her involvement with Man 1 during her 2016 interview with a background investigator because she also believed it was beyond the relevant seven-year scope of interest. The ROI summarizing Applicant’s 2016 interview with a background investigator, marked as GE 7, is not in evidence. Applicant reiterated that she was in a state of duress during her first polygraph, and she recanted statements reflected in the first polygraph report wherein she characterized: (1) her relationship with Man 1 as an “arrangement,” and one that she would have left if he was not giving her money; (2) herself as the “sugar baby;” and (3) feeling “. . . like a prostitute who took advantage of a man who was willing to help me.” She testified that her recantations are contained in the following documents: (1) her 2018 response to AGA’s SOR; (2) her 2018 appeal of AGA’s clearance denial; and (3) her 2021 interview with a background investigator. Of these documents, only Applicant’s July 2018 appeal of AGA’s clearance denial is in evidence.

Applicant acknowledged that she did not make any such recantations during her second polygraph. She also testified that she disclosed her relationship with Man 1 during her 2019 interview with a background investigator, but denied telling the investigator that Man 1 gave her \$13,000 after she asked Man 1 for it out of anger. As previously mentioned, I do not give any weight to the ROI contained in GE 2, given Applicant’s indication that she did not adopt this ROI. Applicant maintained that although she and Man 1 were having an affair, she “felt very much a part of a relationship.” (Tr. at 115-126, 135-139, 157-175, 178-187, 190; GE 2, 3, 4, 5; AE E, F, G, J, K, DD)

Man 1 telephonically testified that he met Applicant in approximately 2006 or 2007, after discovering Applicant’s profile advertisement through an online search for prostitutes. He saw Applicant “a few times” over the course of approximately one to two months in a “fee for services kind of exchange.” During these occasions, he estimated that he paid Applicant a flat fee of \$200 for 30 minutes of services. Although he was married, he asked Applicant if she could be his girlfriend because he no longer wanted her to work as a prostitute. They dated for approximately seven to eight years. He saw Applicant frequently and regularly provided her with financial support. He helped with her expenses related to her apartment rentals, car purchase, education, and day-to-day living. They traveled together on numerous domestic and international trips. In approximately 2008, his medical practice hired Applicant as a consultant to utilize her “computer savvy skill set” to improve its social media profiles. He loved Applicant. (Tr. at 44-76)

Man 1 testified that Applicant told him, while they were dating, that she got married and his relationship with her would be affected by her marriage. He could not recall when Applicant got married and when her marriage ended. He recalled that Applicant did not live with her spouse full time. He stated that both his marriage and Applicant’s marriage had “little effect on our relationship.” (Tr. at 44-76)

In approximately January 2015, Man 1's spouse discovered he and Applicant's romantic relationship. Applicant consequently vacated the apartment she had been renting on his property, and he gave Applicant approximately \$10,000 to help with her relocation expenses. Their relationship subsequently dwindled as they saw each other less and he became involved with another woman. Applicant moved out of state in approximately 2017, and Man 1 stated that he had not since seen or provided Applicant with any assistance, financial or otherwise. Man 1 testified that Applicant never demanded or attempted to extort him for money. (Tr. at 44-76)

Applicant met her former spouse in 2007, when they volunteered for the same presidential campaign. They were peers first, and then their friendship developed into a relationship. They started discussing marriage in early 2011. Applicant described their marriage as an "ethical non-monogamy relationship," or "an open relationship" with "no boundaries," where all parties know and consent and respect boundaries." She testified that she "embraced the fluidity of sexuality" and is "bisexual in western lexicon," and she was aware that her former spouse was unclear about his sexuality at the time of their marriage, which did not deter her. (Tr. at 122-130; GE 1, 4, 6; AE E, I, M, Y, Z, DD)

Applicant's former spouse served in the U.S. military during their marriage. She testified that they did not have any "explicit conversation," during their marriage, about how he was paid as a service member because she was "fiercely independent," she earned an income, and they maintained separate finances. She testified that they did however, discuss during their marriage his receipt of basic allowance for housing (BAH), which she understood as money he received "as a benefit because he lived "in [state A]." She testified that she did not purposefully marry him so that he could receive BAH, and they never discussed marrying so that he could receive BAH. She stated that after their divorce, she and her former spouse maintained a good relationship, and he moved in with her, in her then-boyfriend's cottage, for approximately three to four months in 2014 after he had been reassigned from state B back to state A. (Tr. at 122-130, 187; AE M, Y)

Applicant denied telling a background investigator in 2016 that she married her former spouse because: (1) he is "homosexual;" (2) he could not marry his then-male partner because of existing U.S. military policy; and (3) he asked her to do so to help him keep his home by getting BAH for being married. She also denied telling the 2016 background investigator that she wanted to help her former spouse and she did not want him to lose his home. She also denied telling the 2016 background investigator that if she had to do it over again, she should have told her former spouse "no." She did not recall stating that her former spouse and his then-partner asked a number of single women to do so and that all the other women said "no." The ROI summarizing Applicant's 2016 interview with a background investigator, marked as GE 7, is not in evidence. (Tr. at 151-157; AE M, Y)

Applicant's former spouse telephonically testified. He met Applicant in 2007, when they volunteered for the same presidential campaign. He and Applicant became close friends during the campaign year and subsequently remained in touch. They married in 2011 and divorced in 2013, and their marriage was a "non-exclusive" one. He was previously married from 2002 to 2004, and he was in the process of divorcing his third

spouse as of the date of the hearing. He also testified that Applicant did not work as a prostitute during their marriage and recalled that she had stopped such work prior to their marriage. He testified that Applicant remained one of his best friends. (Tr. at 76-92)

Applicant's former spouse was an officer in the U.S. military. He testified that he never discussed with Applicant, during their marriage, how military pay worked and thus, he did not believe she understood it. In 2011, when he was stationed in state A, he lived in a condominium that he purchased before he married Applicant. He testified that he was never delinquent on his mortgage. He received a \$2,400 monthly housing allowance from the U.S. military, which included Applicant as his wife and dependent, and he used the housing allowance to pay for his monthly mortgage of approximately \$2,800. He testified that Applicant did not live with him in the condominium because her commute to where she worked was too lengthy. (Tr. at 85- 92)

In February 2015, Applicant joined a "sugar baby" website called "SeekingArrangement.com." She testified that she did so to "meet new people and to date," and denied doing so to meet prospects who were affluent or who could provide her with financial benefits. She met an individual through the website (Man 2) and stated, "We had great conversations. Our talking on e-mails, it was very engaging." When they met for the first time, for lunch, "[w]e got along" and lunched for two hours. She testified that after lunch:

[H]e presented a gift of \$100 and I thought that was sweet and generous. I thought we connected really well. And, you know, it looked like we were going to have a second date. And so I was like, why don't you just come over to my place; I'll make dinner for you. Let's have a good time. And he came over; we had a great time for several hours. I thought we were hitting it off. I thought this might lead to a third date as well. We engaged in consensual sex. And then he left money outside in the kitchen and he left, and I was a bit -- yes. He left.

(Tr. at 137-139, 172-176, 178-179, 190-191; GE 3, 5; AE E, F, G, DD)

Applicant reported this encounter during her second polygraph. The second polygraph report reflects that Applicant described the "sugar baby" website as "a Bumble but for the arrangement lifestyle." The report also reflects that Applicant confirmed that being a member of the site implied a willingness to be in an "arrangement." Applicant testified that she did not find it unusual that Man 2 gave her \$100 after their lunch. She described it as "social collectivism, just making sure everyone is okay." She testified that she clarified a statement she made during her second polygraph, that she was surprised when Man 2 gave her money after their lunch because they had not yet had sex, and that she realized he was a "john," or a client seeking a prostitute's services. She testified that she meant to say that the money Man 2 left her was "just a gift." She testified that she made this clarification in her: (1) July 2018 appeal of AGA's clearance denial; (2) "rebuttals in 2018, 19' and '20;" and (3) 2021 interview with a background investigator. Of these documents, only Applicant's July 2018 appeal of AGA's clearance denial, her



November 2019 response to DOD interrogatories, and her Answer, are in evidence. (Answer; Tr. at 137-139; 172-176, 190-191; GE 2, 3, 5; AE E, F, G, J, K, DD)

Applicant testified that she found Man 2's gesture of leaving her money after sex as ". . . pretty insulting and embarrassing. I misread it . . ." She testified that she did not have any discussions with Man 2 about a pay-for-services arrangement, and stated that she "took it as a dating -- a potential relationship. I thought we would go on a third date." She stated that she would not have invited Man 2 to her personal residence, for safety reasons, if she intended to act as a prostitute. She stated that they subsequently had no further contact. She testified that she recanted an assumption she made when she indicated, during her second polygraph, that she knew the \$300 Man 2 left her was for the sex they had and she therefore spent it right away, and that she rebutted this assumption in her "response to the SORs in 2018, 2019, and 2020." Of these documents, only Applicant's July 2018 appeal of AGA's clearance denial, her November 2019 response to DOD interrogatories, and her Answer are in evidence. She testified that she has not since joined any such similar website, and she had no future intentions of doing so. (Tr. at 137-139; 172-176, 189-191; Answer; GE 2, 3, 5; AE E, F, G, J, K, DD)

Applicant used marijuana three times: (1) in 2008, she ate a marijuana cookie because she was curious; (2) in 2012, she smoked marijuana; and (3) in 2014, she ate another marijuana cookie. After she used marijuana in 2014, she felt that she did not need marijuana in her life. She testified that she has no future intent to use marijuana. (Tr. at 130-135, 160, 187; GE 1, 4, 5; AE E, F, I)

The first polygraph report reflects Applicant's disclosure of only her 2014 marijuana use. It also reflects that Applicant referred to her ingestion of a marijuana cookie in 2014 as unintentional, because she did not know that her former spouse and his partner, who were living with her at the time, made marijuana cookies. The second polygraph report reflects Applicant's disclosure of her 2012 and 2014 marijuana use. It reflects that she: (1) did not discuss her 2012 marijuana use during her first polygraph, because she was embarrassed that she had used marijuana while she was unknowingly pregnant; and (2) knowingly ingested a marijuana cookie in 2014, but did not discuss such knowledge because she was concerned that the recency of her use would have a negative impact on her security processing. (GE 4, 5; AE E)

Applicant testified that she unknowingly held a security clearance when she used marijuana in 2012 and 2014. She testified that when she worked as a conference organizer for a DOD contracting company in state A, she did so only for the summer of 2012, as further discussed below. She testified that although she completed an SCA under the company's sponsorship that summer, she did not know the outcome of her security clearance processing because she last spoke to the company's owner when the conference concluded. She testified that she was unaware she was granted a security clearance in 2012 until she began working for her current employer in 2015. She testified that she contacted the company's owner in 2020 to ask when her security clearance was granted after her completion of the 2012 SCA, because she needed to list this information on her 2020 SCA, and his response was that he would "look into it." Applicant disclosed, in her 2016, 2018 and 2020 SCA's, that she was granted a security clearance in

December 2012. She listed that the investigation was completed in approximately September 2012; she was granted a "Secret" clearance in approximately December 2012; and that "It was from US Pacific Command J92." (Tr. at 130-135; GE 1, 6; AE I, DD)

The president and owner of the state-A-based DOD contracting company in which Applicant worked in the summer of 2012 telephonically testified. He met Applicant that summer when a federal customer proposed that Applicant might be able to assist him with an international conference hosted by his company. He hired Applicant as an independent consultant for the eight-week duration of the conference, from approximately August to September 2012. She did not need a security clearance during this time, but he recalled that his company sponsored her for one because it hoped to hire her permanently after the conference's conclusion. He stated that company records reflected that Applicant completed an SCA in August 2012. He did not recall informing Applicant that he was her FSO. He also did not recall having any further communication with Applicant after the conference ended in September 2012, to include any discussions about the status of her clearance, because the opportunity to hire her permanently did not pan out. He testified that he did not believe Applicant had any knowledge that her clearance continued to be processed after she stopped working for his company that September. He also testified that he did not recall being notified, through the Joint Personnel Adjudication System, whether Applicant's clearance had been granted, and he could not recall whether Applicant was granted an interim security clearance in the short time she worked for him. He testified that he only recently communicated with Applicant in 2020, when she sent him an email asking whether he recalled the outcome of her 2012 security clearance processing. (Tr. at 92-113; AE C, D, AA-CC)

Applicant acknowledged she did not disclose her marijuana use on her 2016 SCA. She attributed her failure to do so to poor judgment, stating she was scared of the adverse impact such a disclosure would have on her security clearance eligibility. In her 2018 and 2020 SCA's, Applicant disclosed all three occasions in which used marijuana and she marked "Yes," to the questions that inquired whether her marijuana use occurred while possessing a security clearance. In both SCA's, she maintained that she did not know the outcome of her 2012 security clearance processing until she began working for her current employer in 2015. At that point, her employer informed her that she already had a clearance that was about to expire. (Tr. at 130-135, 150-152, 187-190; GE 1, 6; AE I, DD)

An individual who served as Applicant's administrative career manager from February 2017 until December 2020, when Applicant was transferred to another program, testified in person. This witness was a deputy program manager as of the date of the hearing, and worked for the same employer as Applicant since 2011. She ranked Applicant among the top 15% of employees she has supervised. She stated that Applicant's immediate supervisors favorably reviewed Applicant during the period when Applicant was under her management, and that Applicant was promoted in approximately 2019. The witness testified that she was aware Applicant held a top secret clearance in 2017, and then was denied clearance eligibility after a full-scope polygraph by AGA in approximately 2018, due to prior issues involving prostitution. The witness also testified

that she was aware Applicant was granted a waiver by AGA because the client wanted Applicant on its project. The witness testified that Applicant openly told her, after Applicant failed her first polygraph in December 2017, about Applicant's prior voluntary work as a prostitute as a source of income. The witness described Applicant as "incredibly hardworking" and a valued data scientist, which was "a skill set that's hard to find and [Applicant] excelled with all of the products that she supported . . . ." (Tr. at 22-44; AE U)

An individual who presented himself as an expert in the fields of counterintelligence, insider threat, counterterrorism, and cyber security within the DOD and U.S. intelligence community, and an officer in the U.S. military with experience in national security law, was hired by Applicant as an independent subject-matter-expert to draft an expert witness report on her behalf. He wrote, in his June 2020 report, that he closely examined Applicant's case and was of the opinion that Applicant mitigated any personal conduct, sexual behavior, and criminal conduct security concerns. He wrote that Applicant made a prompt and good-faith effort to correct her omissions and had taken positive steps to reduce vulnerabilities associated with her past misconduct. He also wrote that her past acts of misconduct were isolated events from which she had rehabilitated, taken complete accountability, and demonstrated that she was committed to no longer engaging in such behavior. He concluded that she is "fit to maintain a security clearance." (AE P)

A number of character references attested to Applicant's reliability and trustworthiness. One reference, who referred to Applicant as a colleague and a friend, wrote that he has known Applicant since 2015. He noted Applicant's dedication, both in her community and at work, to mentorship in the area of programming. Another reference, who was Applicant's college advisor and professor, wrote that she has known Applicant since 2001. This reference wrote that she thought "very well of [Applicant's] intellectual abilities," and described her as an honest, mature, and highly productive person. Another reference, who served as Applicant's second-level manager from 2017 to at least 2021, described Applicant as innovative, with a strong commitment to learning and helping others learn. Applicant's employer has rewarded her for her strong work ethic and passionate service. Applicant has participated extensively in volunteer and charity efforts in her community. She has several publications, to include one involving her work in programming. (AE R, S, T, U, W, X)

## **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 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(a),

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

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

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(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.

The Government's basis for SOR ¶ 1.a derives from the ROI in GE 7, and GE 7 is not in evidence. Applicant denies that she married her former spouse so that he could collect a housing allowance from the U.S. military under fraudulent circumstances, and her former spouse corroborated her testimony. Absent any further evidence, the Government failed to establish the applicability of any of the disqualifying conditions under AG ¶ 16, and I find SOR ¶ 1.a in Applicant's favor.

Applicant has consistently maintained that she was unaware she was granted a security clearance in 2012, until her current employer informed her so in 2015. The owner of the company in state A, who sponsored her for the 2012 clearance, corroborated her testimony. As such, I find that Applicant illegally used marijuana in 2012 and 2014, but she did not knowingly use marijuana while holding a clearance in 2012 and 2014. Thus, she did not falsify her 2016 SCA by failing to disclose her use of marijuana, in 2012 and 2014, while holding a clearance. None of the applicable disqualifying conditions under AG ¶ 16 apply here and I find SOR ¶ 1.e, in part, in Applicant's favor, and SOR ¶ 1.f in Applicant's favor.

Applicant worked as a prostitute in 2004, and from late 2006 to early 2007. Applicant had an affair with Man 1 from 2004 to 2007. This affair stemmed from a ten-week transactional relationship borne out of her advertisement for sexual services. Applicant joined a "sugar baby" arrangement website in 2015, through which she met Man 2 who gave her \$100 after they lunched and \$300 after they had sex. Applicant admitted that she knowingly falsified her 2016 SCA by failing to disclose her 2012 and 2014 use of marijuana, because she was scared of the impact such a disclosure would have on her security clearance. I find that AG ¶ 16(a) applies, in part, to SOR ¶ 1.e; and AG ¶¶ 16(c) and 16(e)(1) apply to SOR ¶¶ 1.b, 1.c, 1.d, and 1.e.

AG ¶ 17 describes the following conditions that could mitigate the personal conduct security concerns:

(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 person with professional responsibilities for advising or instructing the individual specifically concerning security processes. 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 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.

The record evidence and Applicant's testimony raise doubts about Applicant's reliability, trustworthiness, and judgment. Applicant did not disclose information about her work as a prostitute in 2004 and 2006 to 2007 during her first polygraph, and she provided conflicting testimony about why she failed to do so. She testified that she: (1) incorrectly assumed the timeframe was beyond the relevant seven-year scope of interest; (2) was under duress during both polygraphs; and (3) would have been able to disclose this information if she had more time. Although she disclosed her work as a prostitute during her second polygraph, she then disputed information contained therein about her need to compartmentalize it and her reason for doing so.

Applicant also made conflicting characterizations about her relationship with Man 1. During her first polygraph, she referenced this relationship as "arrangement," in which she was the "sugar baby" and felt like a prostitute. She then recanted such characterizations because they did not align with her depiction of it as a loving relationship, reiterating that she was under duress when she unfavorably characterized her relationship with Man 1 in her first polygraph.

Applicant also made conflicting characterizations about her intentions behind joining the website in 2015 and her interaction with Man 2. On one hand, she confirmed, during her second polygraph, that the “sugar baby” website implied a willingness to be in an “arrangement.” But she then testified that she joined the website to simply meet new people and date. She also recanted the indication she made, during her second polygraph, that she knew the \$300 Man 2 left her was for the sex they had, testifying that she found the gesture insulting and misread their interaction.

Applicant did not make any efforts to disclose her 2012 and 2014 marijuana use after knowingly omitting it from her 2016 SCA. When she disclosed only her 2014 marijuana use during her first polygraph, she characterized this use as an unintentional ingestion of a marijuana cookie. When she disclosed both her 2012 and 2014 marijuana use during her second polygraph, she acknowledged that she: (1) did not discuss her 2012 marijuana use during her first polygraph because she was embarrassed; (2) intentionally ingested the marijuana cookie in 2014; and (3) was concerned that the recency of her 2014 marijuana use would have a negative impact on her security processing.

I did not find Applicant to be candid or credible at the hearing. Her testimony was inconsistent, in contradiction of the record evidence, and not credible in light of the record evidence. Her failure to truthfully disclose her marijuana use on her 2016 SCA also weighs against any mitigation, rehabilitation, and favorable conclusions concerning her credibility. AG ¶¶ 17(a) to 17(g) do not 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 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to

Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a and 1.f:	For Applicant
Subparagraphs 1.b - 1.e:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge