



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



In the matter of:)
)
) ISCR Case No. 19-03072
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.
05/12/2022

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Between 2016 and 2019, Applicant engaged in behavior that raised concerns about his judgment, discretion, and mental stability. He failed to mitigate these concerns and is no longer a suitable candidate for access to classified information. Clearance is denied.

Statement of the Case

On March 4, 2020, DOD issued a Statement of Reasons (SOR) detailing security concerns under the psychological conditions, financial considerations, drug involvement and substance misuse, and personal conduct guidelines. The Agency acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

Based on the available information, DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals

(DOHA) administrative judge to determine whether to grant or deny his security clearance.

Applicant timely answered the SOR and requested a hearing. Department Counsel sent Applicant the disclosure letter on January 14, 2021. The hearing was initially scheduled for April 21, 2021. I issued a case management order (CMO), detailing the Covid-19 safety protocols and the timeline for the submission of proposed exhibits, witness lists, SOR amendments, and pre-hearing motions on April 8, 2021. At the request of the parties, I extended the filing deadlines and issued the Amended CMO the same day. On April 12, 2021, Applicant requested a continuance, which I granted in the interest of due process. I issued the Second Amended CMO on May 6, 2021. The hearing took place on June 15 and June 16, 2021.

At the hearing, I admitted to the record as Hearing Exhibits (HE):

HE I - III(a): the three CMOs and related email correspondence;

HE IV – VIII: all rulings on pre-hearing motions and related memoranda and email correspondence;

HE IX – XII: administrative notice documents; and,

HE XIII – XIV(a): other case-related administrative documents.

I admitted, without objection, Government's Exhibits (GE) 1-5, 7, 9-22, and 24-29 and Applicant's Exhibits (AE) A-G and L-S. I admitted GE 6, 8, and 23 as well as AE H-K over the objections raised by the parties as explained below. After the hearing, Applicant submitted AE T-X, which are also admitted without objection. (HE XV) DOHA received the transcripts on June 28, and June 30, 2021. They are identified in the record as Transcript (TR) 1 and TR2, respectively. A Hearing Record Index is appended to the record as Appellate Exhibit I. (Ap. Ex. I)

Procedural Matters

SOR Amendment

In advance of the hearing, the Government notified Applicant of its intent to amend the SOR. Specifically, the Government moved to strike allegation ¶ 1.a as written in the March 4, 2020 SOR and replace it with new language. Applicant did not object to the change of language, and the I amended the SOR accordingly. Applicant denied the substance of the amended allegation. (HE XIV – XIV(a)).

Prehearing Motions

On April 26, 2021, Applicant filed a Motion for Additional Discovery, which Department Counsel opposed. I denied the motion, in part, and granted the motion, in part. I denied the request for additional discovery, ruling that the Government met its

discovery obligation under Directive, Additional Procedural Guidance ¶ E3.1.13. I granted Applicant's request that all emails exchanged by the parties be included in the record, and have done so as hearing exhibits. (HE V – V(b))

On June 7, 2021, Applicant filed a *motion in limine* to exclude sexually explicit images contained in GEs 6, 8, and 23. Applicant argued that the images were prejudicial, cumulative, and that their exclusion was necessary to prevent the victimization of Applicant as well as the subject of the images. I denied the motion, ruling that the images were relevant and material to issues alleged in the SOR. (HE VI – VI(c))

On June 10, 2021, the parties filed a joint motion, seeking administrative notice of four documents from the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSMV-V)*. I granted the motion and admitted the documents as HE IX – XII. (HE VII – VII(b)).

On June 14, 2021, the Government filed an unopposed motion seeking permission to file additional evidence after the submission deadline established in the Second Amended CMO. I granted the motion and admitted GE 17-29. (HE VIII – VIII(b))

Evidentiary Issues

I resolved two evidentiary issues at the hearing. First, *Sua sponte* and without objection from the parties, I redacted pages 71, 73, 74, and 75 of Exhibit M that contained medical information about Applicant irrelevant to the issues raised in the SOR. (Tr. 66-68)

Second, Department Counsel objected to the admission of AE H-K, which related to a psychological evaluation procured by Applicant (AE H) and the qualifications of the licensed clinical social worker (LCSW) who performed it. (AE I-K) Specifically, Department Counsel objected to the social worker's designation on her curriculum vitae (CV) as being "[c]ertified by Department of Hearings and Appeals as a subject matter expert." (AE J) The CV does not distinguish which agency conferred this designation. DOHA does not offer such a certification. Department Counsel also argued that the LCSW relied on a statement from a physician not in the adjudicative record; however, it appears that the reference is a misspelling of the physician's name, an immaterial typographical error. I admitted the documents over Department Counsel's objection, with the caveat that I would give appropriate weight and credibility to HE H-K in reaching a decision. (TR1 at 28-44.)

Findings of Fact

Applicant, 57, is an information technology professional who has been employed by a federal contractor since 1988. He was initially granted access to classified information in 1989 and maintained access continuously until February 2017, when his security clearance was suspended. The suspension prompted the current adjudication. He completed a security clearance application in January 2018, disclosing information

about the dissolution of his marriage, which ended in divorce in 2017, and retaliatory actions against him by employees of another federal contracting company, all of whom he identified by name. He also disclosed potentially disqualifying information relating to his mental health, the suspension of his security clearance, illegal drug use, and three delinquent accounts. The ensuing investigation explored those issues and discovered issues with Applicant's federal and state income tax filings. (GE 1; TR1 at 47-48)

Federal and State Taxes

The SOR alleges Applicant, after receiving a filing extension, failed to timely file federal income tax returns for 2010 and 2012 through 2015 (SOR ¶ 2.a), State 1 income tax returns for 2010 and 2015 (SOR ¶ 2.c), and State 2 income tax returns for 2011-2014 (SOR ¶ 2.d). The SOR also alleges that he did not file federal income tax returns for the 2011 and the 2016 through 2018 (SOR ¶ 2.b) tax years as well as State 2 state income tax returns for the 2016 through 2018 tax years. (SOR ¶ 2.e) Applicant did not disclose the unfiled federal and state income taxes on the January 2018 security clearance application. (SOR ¶ 4.c)

IRS tax records show that Applicant timely filed for extensions of time for each of the tax years between 2010 and 2018. With the exception of tax year 2016, he filed for each year after the extension deadline, as indicated in the table below:

Tax Year	Extension Filed	Extension Filing Date	Date Return Received by IRS	Supporting Evidence
2010	Yes	10/15/2011	6/30/2014	GE 3(0121-0122); AE P (103-104)
2011	Yes	10/15/2012	12/10/2013	GE 3 (0123-124); AE P (105-106)
2012	Yes	10/15/2013	8/29/2016	GE 3 (0125-126); AE P (107-108)
2013	Yes	10/15/2014	6/26/2017	GE 3 (0127); AE P (109)
2014	Yes	10/15/2015	9/11/2017	GE 3 (0128); AE P(110)
2015	Yes	10/15/2016	9/11/2017	GE 3 (0129); AE P (111)
2016	Yes	10/15/2017	Remains Unfiled	GE 3 (0130); AE Q (113-119); Answer, Exhibit B
2017	Yes	10/15/2018	5/24/2021	AE Q (118)
2018	Yes	10/15/2019	5/31/2021	AE R (128)

Applicant provided a copy of completed and signed 2016 federal income tax return, dated April 15, 2020, in his answer to the SOR. However, the IRS documentation, a

Wage and Income Tax Statement, does not indicate that the return was filed. (AE Q, pp.113-119)

Applicant testified that he filed the outstanding state income tax returns when he filed the corresponding federal income tax returns. (TR1 at 53-55) According to information he provided from the taxation authorities in State 1 and State 2, he filed the outstanding income tax returns as follows:

Tax Year	State	Date Return Received by State	Supporting Evidence
2010	State 1	4/15/2014	AE T (161); AE U (163)
2011	State 2	12/23/2014	AE V (166)
2012	State 2	4/13/2016	AE V (166)
2013	State 2	4/18/2017	AE V (166)
2014	State 2	8/18/2017	AE V (166)
2015	State1	7/15/17	AE T (161); AE U (163)

For the 2016 through 2018 tax years, Applicant provided tax documents from State 2 that he received refunds for each of those years. (AE Q, pp. 117, 124-125) However, the statements do not include the date he filed the state income tax return. He also submitted photographs of the completed state income tax returns for 2017 to 2019 with copies of certified mail receipts. (Answer – Exhibit B) He claims that he filed his 2019 and 2020 federal and state income tax returns on time, but he did not provide corroborating evidence.

In explaining his behavior, Applicant believed that he was owed refunds for each year. He claims that his tax professional advised him that he had three years to file the income tax returns and claim any refunds due to him. (TR1 at 51-52, 63)

Marijuana Use

The SOR alleges that Applicant used marijuana with varying frequency between 2010 and 2015 while holding a security clearance. In response to questions on his January 2018 security clearance application, Applicant disclosed that he used marijuana, “maybe 3 times total over the past seven years.” He answered the follow-up question about illegal drug use while holding a security clearance affirmatively without additional explanation. (GE 1, p. 0050)

Applicant confirmed his three-time marijuana use in his August 2018 subject interview, telling the investigator that he used the drug at parties with his friends. (GE 3, p. 0092) He did not correct the statement when verifying the accuracy of the subject interview summary in response to DOHA interrogatories. (See GE 3, pp 0115-0116) He confirmed his history of marijuana use during a July 2019 psychological evaluation, telling the evaluating psychologist that he used marijuana at his home with friends three

times between 2010 and 2015 and that he could not recall his last date of use. (GE 2, p 0069) In an April 2021 evaluation, he told the evaluating LCSW that he attended three social events between 2010 and 2015 where he used marijuana. (AE H, p. 43) At the hearing, he also stated he reported the drug use on a security clearance application he completed in 2016 in connection with a periodic reinvestigation. That security clearance application is not in the record. (TR1 at 75).

During his testimony, Applicant confirmed his knowledge that marijuana use was illegal under federal law and the prohibition against illegal drug use by clearance holders. (TR1 at 72-73) However, when questioned about his history of marijuana use, he gave evasive answers. (TR1 at 63-65) During cross-examination by Department Counsel, Applicant could not confirm the number of times he used marijuana, explaining that his disclosure on the security clearance application was his best guess and the "worst case scenario." He explained that the actual times he used the drug could also be zero. (TR 1 at 77-79, 108-109) When pressed on whether he used the drug while having a security clearance, Applicant responded, "I tried marijuana during the time frame wherein I had a security clearance." (TR1 at 109-110)

Applicant stated that he has no intent to use marijuana in the future and provided a signed statement to that effect. He also stated that he no longer associates with people who use the drug. (AE C; TR 1 at 64-66) He provided a drug screen report, dated April 2021, showing he did not test positive for any illegal drug. (AE M)

Marital Issues

Although the 2018 investigation identified potential tax issues and past marijuana use, the investigation was prompted by the suspension of Applicant's clearance in February 2017. The issues leading up to the suspension stem from his behavior during his separation and eventual divorce.

Applicant married in August 2014. Together, he and his wife ("Wife") engaged in an alternative sexual lifestyle. Around December 2014, Wife developed an interest in a particular sexual community ("Community"). Together the couple participated in events and developed friendships with other members. Over time, Applicant realized that he did not have the same interest in the Community's lifestyle as did Wife. Together they agreed that she would continue to participate with an agreed upon male partner ("Partner"), with whom the couple had developed a friendship. Although he decreased his participation in the Community, Applicant leveraged his friendship with another member ("Friend") to help Wife obtain a position with a federal contracting company. In early 2016, she began a position at Corporation A, reporting to Friend. Because Wife's position required a security clearance, Applicant helped her complete the security clearance application. (GE3-6,8,17-18)

Wife's relationship with Partner intensified and began to interfere with the marriage. Around May 2016, Applicant separately asked Wife and Partner to end their relationship. Both refused and Wife decided to leave the marriage. Distressed by Wife's decision, which he believed was caused by the manipulation of Partner, Applicant

attempted to stage an intervention. He asked Wife's mother and cousin to convince her to end her relationship with Partner, leave the Community, and return to the marriage. Applicant did not participate in the meeting, allowing the family to speak privately. He claims that Wife alerted Partner to the meeting and that Partner confronted him as he waited outside. During the ensuing altercation between Applicant and Partner, Applicant claims he lost his cell phone and several credit cards. He accuses Partner of stealing his phone and Wife's cousin of stealing the credit cards. (GE 1, p. 0021-0022, GE 3, 0087, GE17, pp. 0602-0604)

Later that evening, a woman with whom Applicant worked at his client site, and a second woman, the chief operating officer of his employer ("Employer 1"), received a series of inappropriate messages from his cell phone number. He was terminated the next day. Applicant denies sending the offensive messages, alleging that Partner sent them from Applicant's stolen cell phone. Applicant filed a police report regarding his stolen phone and credit cards. Wife declined to participate in the investigation – a decision Applicant blames on manipulation by Partner. (GE 1, p. 0021-0022, GE 3, 0087, GE17, pp. 0602-0604)

Applicant started a position with Employer 2 in October 2016. He credits Friend for recommending him for the position. Although they worked for different federal contracting companies, Applicant, Wife, and Friend supported the same federal program. (GE 4-6, 7, 12)

Applicant's Breaking Point

In July 2016, Applicant learned that Wife planned to participate in a Community event that he found objectionable and potentially illegal. He unsuccessfully attempted to have the event canceled by reaching out to the event organizer as well as a family member of the organizer. He also reached out to Friend. After the event, the Community posted pictures of Wife at the event in the private, members-only Community website, to which Applicant maintained his membership. Applicant described July 2016 event as his breaking point. GE 4, GE 17, GE 25

Because he helped Wife obtain a job with a federal contracting company and helped her complete a security clearance application, Applicant believed he had a duty to report information that could raise a security risk to the proper authorities. (GE 3) Between August 2016 and November 2017, he filed four adverse information reports with the Personnel Security Management Office for Industry (PSMO-I). (GE 4-6,8) Because he felt that the PSMO-I did not take appropriate action on the information he provided, Applicant wrote letters of concern to the Office of Personnel Management (GE 9), the Department of Labor – OSHA division as well as federal and state law enforcement agencies. According to a chart prepared by Applicant, he sent at least 17 letters to various government agencies and at least one national organization dedicated to the protection of sexually exploited individuals. (GE 14, 29) He also published a website between December 2016 and June 2017. (GE 17-18) He stated that the purpose of the website was partially a method of dealing with his feelings, but also so that Wife's family could see her activities. The record contains a sample of almost 300

pages of documentation, including sexually graphic pictures of Wife, Applicant sent to third parties or published on his website.

In the adverse information reports to the PSMO-I, letters to the other organizations, and on his website, Applicant identified Wife by her full name. He described, from his point of view, her transformation from Christian college student to suburban housewife to active participant in the Community. He wrote about the dissolution of their marriage and the role Partner, a former friend, played in the deterioration of the marital relationship. He detailed Wife's sexual activities as well as her participation in the Community. He reported the illegal nature of her relationship with Partner, because they were both legally married to other people. He accused Wife of being an accessory to theft of his cell phone and credit cards. He alleged that her refusal to participate in the criminal investigation of the theft was due to manipulation by Partner. He also named Friend, the nature of his position at Company A, and accused Friend of sabotaging Applicant's career to protect the Community. (GE 4-5,7)

Applicant supplemented each letter and posted on his website photographic evidence of Wife's sexual activities that he downloaded from the Community private website. The pictures showed Wife's full face and nude image. Applicant disseminated pictures of Wife engaged in sex acts alone and with Partner, as well as pictures of her participating in sex acts at Community events. Applicant also disseminated and published pictures of Partner and Friend, also identifying them by name, and detailing their involvement in the Community. He also attached to his letters and published on his website screen shots of text messages, he believed substantiated his concerns about Wife's behavior.

Applicant stated that his use of Wife's sexually explicit images was reviewed by local law enforcement and Employer's 2 security office. He claims that neither raised any issues with his use of her image. He did not provide any evidence to corroborate these statements.

Applicant's Interaction with Company A

On multiple occasions between December 2016 and January 2017, Applicant reached out to Friend, Wife's supervisor, for assistance with the issues he believed were created by her involvement in the Community and her relationship with Partner. In soliciting Friend's help, Applicant revealed private information about Wife's background that he admits she had only disclosed to him and one other trusted person, because he felt Friend needed the information to fully appreciate the seriousness of the situation as he saw it. Applicant also explained to Friend that he outed Partner as a member of the Community on his website because he believed it was necessary to protect Wife from Partner's manipulations. Friend, acting in his professional capacity, declined to engage with Applicant about matters in his personal life. (GE 6, pp 0278-0283, GE 25)

Company A's security officer ("FSO-A"), citing the temporary restraining order Wife received against Applicant in January 2017, Applicant's interaction with other Company A employees, including his emails to Friend, which Friend perceived as

threatening, barred Applicant from the grounds of Company A. Because their work sometimes required Friend, Wife, and Applicant to work at the same client site, Company A requested that the client notify them when Applicant was going to be on site so that Wife and Applicant were not there at the same time. (GE 26)

Applicant's Termination from Employer 2

In addition to information about Wife's sexual activities, Applicant shared personal information on his website. In approximately February 2017, Applicant published details of his job with Employer 2, and identified the federal program on which he worked. He also named and posted a photograph of the Flag Officer ("Flag Officer") directing the program. Applicant believes that Community members alerted Flag Officer to the website. (GE 17, p 0553) Upon learning of his identification on Applicant's website, Flag Officer demanded both Applicant and Wife be removed from their jobs supporting program. Employer 2 filed an incident report in JPAS, indicating that Applicant misused Employer 2 information technology systems by mentioning the program on his personal website. Applicant removed the reference from his website. Applicant stopped posting the website in June 2017, shortly after the divorce became final. However, the website remained accessible to the public until 2019, when he deactivated it. (GE 1, 11-13)

In August 2017, Employer 2 began an investigation into Applicant's conduct, specifically related to the information he disclosed on his website in February 2017. It is unclear why Employer 2 waited six months to begin the investigation. In an effort to aid the investigation, Applicant provided supplemental information to the Employer 2's security department, again explaining the circumstances that he believed caused the deterioration of his marriage and how that spawned the autobiographical website. Employer 2 suspended Applicant's clearance and ultimately terminated him in September 2017.

Applicant's Reports Retaliation by Company A and its Employees

Applicant began to believe that his outing of Community members to Government agencies prompted Company A and Flag Officer to retaliate against him. Applicant wrote letters to military leadership (GE 11) and his Congressional representatives expressing his concerns. (GE 13; see also GE 29) He filed ethics complaints with Employer 2. (GE 7) He filed complaints with the Inspector General's (IG) Office of two agencies. (GE 12, 15) Ultimately, he filed a lawsuit against the individuals who he believed engaged in the retaliatory conduct. (GE 19-26, 29)

Employer 2 Ethics Complaint

In August 2017, Applicant filed an ethics complaint with Employer 2. He asserted that Friend, FSO-A, and Company A engaged in unethical behavior toward him in retaliation for outing members of the Community, to include Friend, Wife, and Partner. Applicant accused Friend and FSO-A of mishandling the derogatory information regarding Wife that he believed raised security concerns. He accused

Friend of using his position to sabotage Applicant's position with Employer 2 in an effort to protect Community members. Applicant also alleged that Friend allowed Partner to manipulate Wife in a way that did not reflect well on Company A. (GE 7)

In addition to the unethical behavior Applicant believes was directed at him, he accused Friend, a former Employer 2 employee, of engaging in unethical conduct towards Employer 2. According to Applicant, when Friend transitioned from Employer 2 to Company A, he poached employees from Company 2. He also accused Company A of poor work performance as a subcontractor for Employer 2. There is no evidence that Employer 2 took any action on this complaint. (GE 7)

Other Complaints

In April 2018, Applicant wrote a letter to military leadership reporting his concerns about the Community retaliating against him for outing members on his website. He named Friend in the letter and accused him of using his position with Company A and his relationship with Flag Officer to manipulate the Flag Officer into taking adverse action against Applicant, which caused his termination from Employer 2. Applicant also explained his belief that the Community manipulated Wife into engaging in potentially illegal sexual activity and ending their marriage. Ultimately, he asked the military leadership to investigate his claims and "get answers" from Flag Officer. Applicant insinuated that by failing to investigate that the military leadership would be condoning the exploitation of women by the Community. (GE 11)

He also wrote a letter to his U.S. Senator identifying himself as a whistleblower experiencing professional retaliation by Flag Officer, acting under the influence of Friend, for reporting members of the federal contracting community involved in the sexual exploitation of women. He also accused military leadership of failing to investigate the allegations or take actions against the perpetrators, specifically Friend and Company A. Applicant asked the Senator to help him obtain information about his suspended security clearance, to request that DSS to suspend the clearance of the individuals he named in the letter, to interview the Flag Officer about his actions, and to refer his case to the FBI. As an attachment to the letter, Applicant included a flash drive, including the correspondence he generated related to his allegations and a video clip of Wife and Partner. (GE 13)

Inspector General (IG) Complaints

In May 2017, Applicant filed a complaint with the inspector general's (IG) office with oversight of the military department responsible for the program Applicant supported. According to Applicant, he did not receive a response to that complaint. He filed a second complaint in April 2018. Describing himself as a whistleblower for outing Community members, including Friend and Wife, on his personal website and in adverse information reports to the PSMO-I. Applicant alleged that Friend, in his professional capacity at Company A, failed to alert FSO-A about wife's potentially illegal activities in the Community. He also alleged that Company A and its employees, sabotaged his positions with Employers 1 and 2 in retaliation for outing Community

members. He claimed that employees of Company A conspired to have him removed from his position with Employer A, by exerting improper influence over Flag Officer, and pushing to have his clearance suspended. (GE 12)

Applicant asked the IG to investigate the retaliatory actions of Company A and the Flag Officer against him. He also asked the IG to investigate if Company A properly hired Wife for her position that he helped her secure, citing her lack of education and professional experience, as well as her involvement in the Community. He also requested that the IG investigate whether Friend had an inappropriate relationship with Wife, his subordinate. He did not receive a response to his complaint. (GE 12)

In May 2018, Applicant filed a complaint with the DOD IG. Applicant alleged that Flag Officer, acting under the influence of Company A employees, retaliated against him for outing Community members associated with the federal program he managed to a member of Congress, in reports to the relevant security agencies, and in three IG complaints. (GE 15)

The DOD IG responded to Applicant's complaint in November 2018, finding that insufficient evidence existed to warrant an investigation of his reprisal complaint because the available evidence did not support a finding that a protected disclosure could have been a factor in his dismissal from Employer 2. The DOD IG informed Applicant that the evidence, which included a clarification interview with him, investigation results from DSS, and information from Employer 2, suggested that his termination was related to domestic matters and self-reported derogatory information that constituted a security violation. In closing out the case, the DOD IG also informed Applicant that evidence showed that he was terminated from Employer 2 for violating the company's acceptable information technology use policy and because the suspension resulted in his inability to fulfill the duties of his position. Applicant responded to the DOD IG's dismissal of his case, stating the agency received and acted on false information given to the IG investigator. There is no evidence in the record to suggest that the DOD IG responded to this allegation. (GE 27)

Lawsuit

In March 2019, Applicant filed a civil lawsuit against Friend, FSO-A, and Flag Officer in State 3 court, where Company A conducts business operations. Applicant alleged three causes of actions: tortious interference with a business relationship; intentional infliction of emotional distress; and, defamation of character. Flag Officer filed a motion to have the case removed to federal court, where the charges against him were dismissed for lack of jurisdiction. Friend and FSO-A also moved for dismissal of the complaint. In his memorandum in opposition to their motion to dismiss, Applicant included the same sexually explicit photographs of Wife he published on his website and submitted to the multiple federal agencies. The court questioned the need for Applicant to submit such explicit material and admonished Applicant for not seeking leave to file the material under seal. The court sealed the images from public view pending the resolution of the motion to dismiss. As of the hearing date, the lawsuit was still ongoing. (GE 19-26, 29)

2019 Psychological Evaluation

DOD launched the current adjudication in 2018 and referred Applicant for a psychological evaluation by a licensed psychologist. The psychologist had Applicant complete a Personality Assessment Inventory (PAI) and interviewed Applicant in July 2019. During the interview, Applicant discussed his personal background, his mental health history, his marriage and its deterioration as well as his professional history, including his terminations from Employers 1 and 2. He also discussed his use of illegal drugs. In addition, the psychologist reviewed Applicant's 2018 background investigation, the security clearance application, court records, and medical records from two other physicians who have treated Applicant for Attention Deficient Hyperactivity Disorder (ADHD) and other medical conditions. (GE 2)

The psychologist noted the following opinion from the psychiatrist who treated Applicant for ADHD from 2009 to 2016:

[The psychiatrist] reported that the subject experiences many relationship and financial issues that he does not handle responsibly and "creates many of his own problems." [The psychiatrist] indicated that this subject has the potential for reckless behavior. This provider noted that this subject had a fair prognosis and identified ADHD as his diagnosis. (GE2, p 0068)

The evaluating psychologist also noted that Applicant did not perceive much benefit from the treatment provided by his former psychiatrist. The treatment records from that physician, which included the time Applicant met Wife and when their marriage began to deteriorate, show that the Applicant was largely stable, but recommended therapy when he began experiencing marital issues. The treatment records do not contain the prognosis cited by the evaluating psychologist. (GE 16)

However, based on the interview with Applicant, the psychologist noted:

[Applicant] has demonstrated poor judgment. This subject provided detailed information regarding the sexual activities of his former spouse to multiple agencies as well as the public by publishing a website in 2016. While this subject stated that he published the site to expose individuals who harmed his spouse, he did not consider that his wife is a consenting adult and this information exposed private information that many would find to be unnecessary and harmful. In fact, his judgment around mentioning the [federal program] on his website was impeached by his government contacts at that time. [Applicant] has been fired twice in the last three years. Both terminations were due at least in part to poor discretion on the part of [Applicant]. Further evidence of the subject's poor judgment is found in his report that he has used marijuana more than one time in his home, while maintaining a security clearance; however, there is no evidence of a current substance use disorder from information

[Applicant] presented during the clinical interview or indicated in available records. (GE 2, p.0073)

After reviewing the available data, the psychologist made the following diagnoses from the DSM-V:

- F90.2 Attention Deficit Hyperactivity Disorder, Combined Type; and,
- F33.2 Major Depressive Disorder, Recurrent, Severe, without psychotic feature.

The psychologist opined that these conditions alone, in and of themselves, were unlikely to impair judgment or reliability, giving his ongoing medical treatment. The psychologist also opined that Applicant's poor judgment is directly related to the emotional distress he experienced during the dissolution of his marriage and divorce. Ultimately the psychologist concluded that, "in the future, it is questionable whether this individual's emotional distress will continue to impair his judgment as it has done in the relatively recent past." (GE 2, 0074)

2021 Psychological Evaluation

Applicant procured his own psychological evaluation from a licensed clinical social worker in April 2021. The LCSW owns and operates a practice dedicated to private addiction with a specialized focus of healing the underlying causes of addiction. The LCSW is a certified substance abuse counselor and a licensed substance abuse professional. In her curriculum vitae, the LCSW describes her specialty in security clearance evaluations and mental health treatment for federal government workers and contractors as follows:

Certified by [another federal agency] to assess and treat individuals with security clearance issues. Certified by the Department of Hearings and Appeals as a subject matter expert.

In the text of the evaluation the LCSW states that she is a

...qualified mental health professional approved by the U.S. Government and certified by the Department of Hearings and Appeals (DoHA)." (AE J)

In a supplemental declaration, the LCSW explains that she believed the other agency fell under the DOD umbrella and that the certification also applied to DOD DOHA. (AE X)

I note and specifically find that DOD DOHA does not offer such a certification. Furthermore, there is nothing in the record to support her assertion that she is recognized by the Government as a qualified mental health professional.

In reaching her conclusions, the LCSW relied on an interview with Applicant, the SOR and Applicant's answer, the OPM investigative report, the 2019 psychological evaluation ordered by DOD, a May 2020 statement from Applicant's current treating physician, and a statement from Applicant's former treating physician. (AE I) The LCSW analyzed his behavior under the adjudicative guidelines, reaching the following conclusions:

Substance Abuse and Misuse

While the LCSW acknowledged that Applicant used marijuana three times between 2010 and 2015, the LCSW opines that is highly unlikely to ever occur again because the personal and professional consequences were very significant. The LCSW also noted that Applicant does not continue to associate with any individuals who use illegal drugs, that he avoids environments where drugs are used, and his signed notice of intent to abstain from future drug use. (AE H, pp 44-45)

Psychological Conditions

The LCSW determined that Applicant has never engaged in irresponsible, violent, self-harming, chronic lying, suicidal, deceitful, or exploitative behavior. The LCSW noted that Applicant's behavior should be taken into context as that of someone who was trying to vindicate himself, save his marriage, and bring illegal activities to the attention of authorities – a series of events unlikely to recur. Opining that Applicant had received varying opinions from "fair" outcome to "positive" prognosis, the LCSW concluded that Applicant has a more positive prognosis for the future. The LCSW also concluded, without identifying a specific condition, that the condition is under control, in remission, and with continued support, there is a low probability of recurrence of similar behavior. Ultimately, the LCSW found that the emotions and mental conditions caused by the dissolution of his marriage are will behind Applicant and that he has moved on with his life and has no intention of dwelling on the past. (AE H, pp 45-48)

Personal Conduct

The LCSW determined that Applicant did not engage in any activity considered disqualifying under the personal conduct guideline; specifically, that he had not engaged in any behavior considered disruptive or violent, or that he engaged in any inappropriate behavior or activities that could affect his personal or community standing as described in the adjudicative guidelines. The LCSW indicated that Applicant had not engaged in any pattern of dishonesty, but "erred on the side of caution" by being fully transparent about his life. He misunderstood the rules of filing income taxes. The LCSW did not make any other findings regarding the financial considerations concerns alleged in the SOR. Ultimately, the LCSW concluded that Applicant did not engage in any offenses that would cast doubt on his reliability to hold a security clearance and protect the national interests of the United States of America. (AE H, pp 48-52)

Clinical Diagnosis

The LCSW administered a personality diagnostic questionnaire to screen for the presence of personality disorders. The results did not detect any presence of paranoia or paranoid disorder. The questionnaire did not reveal the presence of narcissism, borderline personality disorder, anti-social personality or conduct disorder. The test offered a propensity for obsessive compulsive disorders which the LCSW felt was in line with Applicant's ADHD diagnosis. The testing revealed no substance use disorder and that Applicant had no probability of an adverse emotional, mental, or personality condition that could impair judgment, reliability, or trustworthiness. The LCSW made the following diagnoses:

- F10.929 No Use Disorder, with no treatment required; and
- Z71.1 Deferred Diagnosis, with continued treatment for ADHD, major depressive disorder, and generalized anxiety disorder.

Based on all of the information the LCSW reviewed, she determined that Applicant is not at risk of relapse or return to his previous behavior. (AE H, pp 52-54)

Current Medical Treatment

Applicant has been seeing his current psychiatrist since December 2016 for the treatment of ADHD, major depressive disorder, and generalized anxiety disorder. The treatment only includes medication management. He is not currently in therapy. According to the psychiatrist, Applicant has responded well to his pharmacological treatment and has been stable throughout the treatment. The psychiatrist, noting Applicant's history of working on projects that requires a security clearance, believes that if Applicant's clearance is reinstated that he would continue to be successful. The note does not mention if the psychiatrist is familiar with the incidents and conduct leading up to Applicant's security clearance suspension. (AE A)

DOHA Interrogatory Responses

In January 2020, Applicant provided a 104-page response to a set of DOHA interrogatories. A series of questions sought information about his use of information technology, specifically asking if he accessed Wife's phone, social media accounts, and emails accounts without her permission. Applicant admitted that while he had access to her phone during their marriage, he did not have Wife's permission to copy any data from it. Applicant also admitted that he continued to use the password spreadsheet Wife created in 2015 that contained her login and password information for her social media and email accounts after she left the marriage in May 2016 through at least June or July. He believed that because he was still her husband, he had the ability to use the information. When Wife changed her passwords, Applicant assumed that she no longer wanted him to have access to her accounts. He felt his actions were necessary to protect Wife from what he viewed as the dangerous influence of Partner. (GE 3, pp 0098-0105)

He included a copy of the password spreadsheet Wife updated as of March 2016, which included login information for several alternative lifestyle websites. In his interrogatory response, Applicant stated that he found it “ironic” that his access of Wife’s information technology was being viewed as a security concern. (GE 3, pp 0100-0101)

Character Letters

Applicant did not present any witness testimony, but provided two character letters in support of his application. Each described him as a well-liked. The character of the letter from a work colleagues described Applicant as behavior at work as being valued for his technical expertise and the quality of the support he provides their client. The co-worker acknowledged that Applicant told him about the problems with his wife and his belief that the loss of his clearance was based on an unjustified attack on his character. The co-worker indicated that Applicant behaved like a competent, trustworthy, and responsible individual. The co-worker would recommend Applicant for access to classified information. (AE E)

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.” 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 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

The SOR alleges disqualifying conduct under the financial considerations, drug involvement and substance misuse, psychological guidelines, and personal conduct guidelines. The Government has established a *prima facie* case under each.

Financial Considerations

The SOR alleges that Applicant, after filing for extensions of time to file, failed to timely file his federal and state income tax returns from 2010 to at least 2018. The record establishes that Applicant filed each of the federal income tax returns at issue between 1 and 3 years after the filing deadline. Failure to 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. His conduct invokes the following financial considerations disqualifying conditions:

AG ¶ 19(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 following financial considerations mitigating condition partially applies:

AG ¶ 20(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with that arrangement.

Applicant has filed the federal income tax returns for 2010 through 2015, and 2017 through 2018. He did not provide sufficient evidence to support a finding that he filed the 2016 federal income tax return. Applicant has also established that he filed the 2010 and 2015 income tax returns with State 1, and the 2011 through 2014 income tax returns with State 2. Those returns were filed within 1 to 3 years after the year in which they were due. While tax statements from State 2 contained in AE Q are sufficient

evidence to establish that he filed the 2016 through 2018 State 2 income tax returns, neither those documents nor the photographs of the completed returns establish when they were actually filed.

The security concern goes beyond the actual filing of the outstanding federal and state income tax returns. The reasons for his failure to timely file are also relevant. Applicant held a security clearance for 22 years before he began an eight-year streak of failing to timely file his federal and state income taxes. The explanation he offered at hearing does not mitigate the concern. It is unlikely that a tax professional advised Applicant that receiving a refund changed his filing obligations under state and federal law. Ultimately, Applicant failed to provide sufficient explanation to mitigate the concerns regarding his failure to timely file his federal and state income tax returns after receiving extensions of time to do so.

Drug Involvement and Substance Misuse

The illegal use of controlled substances . . . that cause physical or mental impairment . . . raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. (See AG ¶ 24). Applicant disclosed on his January 2018 security clearance application that he used marijuana three times between 2010 and 2015, while having a security clearance. Applicant confirmed his usage in his August 2018 subject interview, a 2019 clinical interview, and a 2021 clinical interview. At the hearing he admitted he aware of the illegality of marijuana use under federal law and the prohibition against illegal drug use by cleared individuals.

Applicant's conduct requires the application of the following disqualifying conditions:

AG ¶ 25(a) Any substance misuse; and

AG ¶ 25(f) Any illegal drug use while granted access to classified information or holding a sensitive position.

The following mitigating conditions partially apply:

AG ¶ 26(a) The behavior happened so long ago, was infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 26(b) the individual acknowledges his drug involvement and substance misuse, provides evidence of actions taken to overcome this problems, and has established pattern of abstinence, including but not limited to:

- (1) Dissociation from drug-using association and contacts;
- (2) Changing or avoiding the environment where drugs were used; and
- (3) Providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

While the above mitigating conditions partially apply, the security concern is not mitigated. Although Applicant's drug use is not recent and he provided a signed statement of intent to abstain from future use, his promise to abstain lacks credibility. Applicant's drug use was purely recreational and did not occur under circumstances unlikely to recur. During the investigation, Applicant provided conflicting information about the circumstances of his marijuana use. At the hearing, he gave evasive testimony about his drug use, attempting to assign different meaning to the disclosure he made on his 2018 security clearance application.

Psychological Conditions

An applicant's mental health becomes a concern when "[c]ertain emotional, mental, and personality conditions can impair judgement, reliability, or trustworthiness. A formal diagnosis is not required for there to be a concern under this guideline. (AG ¶ 27)

The SOR alleges that the physician who treated Applicant between 2009 and 2016 for ADHD gave him a fair prognosis, noting that he could engage in irresponsible and reckless behavior in the future. While the prognosis seemed prescient, the prognosis without context is not helpful because the circumstances and events prompting the prognosis are unknown. It is unclear when the physician made the prognosis and what behaviors he observed to make that finding. Furthermore, Applicant has been under continuous treatment for ADHD since 2009. A letter from his current physician, who has treated Applicant since 2016, believes that Applicant is stable. The psychologist who performed the 2019 DOD-ordered evaluation opined that ADHD was not the cause of Applicant's behavior. Based on the available information, this allegation is resolved in Applicant's favor.

However, Applicant's behavior does warrant consideration under this guideline absent any particular diagnosis. Between May 2016 and June 2017, Applicant shared details of his then estranged Wife's private and consensual sexual activities and her romantic relationship with her new partner with numerous government agencies and on the internet. He also disseminated sexually explicit photographs of her to third parties and published them online. He also accused another federal contracting employee and a flag officer of retaliation for publicly outing individuals involved in an alternative sexual lifestyle community. The record contains a sample of these writings, consisting of more than 300 pages. In the 2019 psychological evaluation, the psychologist attributes Applicant's behavior to the emotional distress he experienced after his Wife left the

marriage. The poor judgment and lack of discretion Applicant demonstrated was not the result of any particular mental health condition.

Based on the evidence, the following psychological conditions disqualifying conditions apply:

AG ¶ 28(a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behavior.

In response to the DOD-ordered 2019 evaluation, Applicant procured an evaluation from a LCSW in April 2021. This evaluation does not offer any information or insight that explains, refutes, or mitigates Applicant's behavior. In terms of evaluating the underlying conduct, the LCSW attributes Applicant's actions to altruistic motives: saving his ex-wife, vindicating himself, and alerting authorities to potentially illegal behavior, therefore seeming to justify his conduct. The evaluation does not critically examine Applicant's conduct, but rather reinforces his narrative that he is the aggrieved party.

While Applicant may have been emotionally devastated by the ending of his marriage – he was also angry. His anger caused him to behave inappropriately and obsessively. He is not a victim. He is not whistleblower. In his anger he chose to victimize the people he believed caused him harm. However, in his efforts to do so, his behavior raised serious doubts about his emotional and mental stability. Over the course of 14 months, Applicant engaged in behavior that was contrary to his self-interest and professional preservation. He alone is responsible for the consequences that have befallen him as a result of his efforts to expose his ex-wife and those associated with her.

The record does not contain any information to mitigate the concerns raised by Applicant's behavior. At the hearing, it became clear that Applicant does not see the issue with his behavior. As such, he has not spent any time examining his motivations or the security implications of his actions. Because he has failed to do so, he has not sought counseling to develop a better understanding about his behavior or develop better coping mechanisms when faced with emotional distress. Accordingly, Applicant remains at risk of behaving similarly in the future when he finds himself unjustly aggrieved or in emotional distress. None of the psychological mitigating conditions apply.

Personal Conduct

An individual's personal conduct raises concerns about their reliability, trustworthiness, and ability to protect classified information when it involves questionable judgment, lack of candor, dishonest, or unwillingness to comply with rules

and regulations. Of special interest is any failure to provide truthful and candid answers during national security investigative or adjudicative process. (AG ¶ 15)

The SOR alleges that Applicant falsified his security clearance application by failing to disclose his failure to timely file his federal and state income tax returns between 2010 and 2018. A finding of falsification requires a finding that Applicant acted with intent to deceive the Government. Here, no such intent exists. Applicant's failure to disclose this information is consistent with his testimony that he had three years to file the outstanding returns. This allegation is resolved in Applicant's favor.

The Government cross-alleges under the personal conduct guideline, Applicant's marijuana use while having a security clearance and his conduct after the dissolution of his marriage. Both issues are independently disqualifying under the relevant guidelines, as discussed above. However, Applicant's conduct highlights the concerns identified in AG ¶ 15, casting doubt about his ability to protect classified information.

Whole Person Concept

Based on the record, I have significant reservations about Applicant's current security worthiness. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). When considered together, Applicant's conduct supports a negative whole-person assessment. In trying to expose his wife, Applicant demonstrated a lack of judgment and poor discretion. His motivations were not altruistic. He did not act out of concern for his wife. He is not a whistleblower, seeking to expose fraud, waste, or abuse of government resources. His actions were punitive, exploitive, and vengeful – an attempt to embarrass and hurt his ex-wife and those associated with her.

Applicant shared private information indiscriminately and publicly without regard for the potential security implications raised by his actions. What the LCSW hailed as a display of transparency, actually revealed Applicant's inability to recognize personal and professional boundaries as well as a profound lack of discretion. In his anger and emotional distress, Applicant abandoned this principle to such an extent that he cast doubt on his ongoing security worthiness. He showed disrespect for the personal privacy of others, invading it whenever he felt justified. He handled his own private information and that of others with such reckless disregard that he raised serious concerns that he would handle and safeguard classified information in the same manner. This negative whole-person assessment is not mitigated by his years of having access to classified information without incident, or the favorable character information in the record. Applicant's actions demonstrated that he lacks the good judgment, reliability, and trustworthiness required of those granted access to classified information.

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, Psychological Conditions	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Financial Considerations	AGAINST APPLICANT
Subparagraphs 2.a – 2.e:	Against Applicant
Paragraph 3, Drug Involvement and Substance Misuse	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Paragraph 4, Personal Conduct	AGAINST APPLICANT
Subparagraphs 4.a:	Against Applicant
Subparagraph 4.b – 4.c:	For Applicant

Conclusion

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

Nichole L. Noel
Administrative Judge