



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



In the matter of:)
)
) ISCR Case No. 20-03120
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

08/11/2022

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the sexual behavior, foreign influence, or personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 18, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline D, sexual conduct, and Guideline B, foreign influence. Applicant responded to the SOR on July 14, 2021, and requested a decision based on the written record in lieu of a hearing. On December 23, 2021, the Government issued an amendment to the SOR detailing additional security concerns under the aforementioned guidelines and under Guideline E, personal conduct. Applicant responded to the SOR amendment on February 7, 2022, and indicated that he still wished to have a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on March 11, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that he had 30 days from his date of receipt to file objections and submit material to

refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 4, 2022. As of May 24, 2022, he had not responded. The case was assigned to me on June 16, 2022. The Government exhibits included in the FORM, marked as Items 1-5, are admitted in evidence without objection. Department Counsel made a written request that I take administrative notice of certain facts about the People's Republic of China (China). Without objection, I have taken administrative notice of the facts contained in the request, which I have marked as Administrative Notice (AN) I.

The facts in AN I are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is the significant threat of espionage, cyber-espionage, and cyber-attack threats to the United States. Also noted is the exploitation of Chinese citizens or persons with family ties to China to gain insider access to military and defense contract secrets; economic espionage; and the significant ongoing human rights problems in China.

Contrary to common practice in these proceedings, Department Counsel failed to provide a written request for me to take administrative notice of the country conditions of other countries implicated under Guideline B in the SOR. On my own motion, I have taken administrative notice of country conditions as set forth in official U.S. Government documents for the Philippines, Japan, Vietnam, and Thailand that I have marked as AN II-V, respectively. Those facts are summarized in the official government documents, so I will not recite them verbatim here, but I will note general information with respect to each, to wit:

The Philippines, while an ally of the United States, suffers a significant threat of terrorism, civil unrest, and ongoing human rights problems;

Japan is a successful democracy whose alliance with the U.S. is the cornerstone of U.S. security interests in Asia. Japan has provided political and financial support to the U.S. on a broad range of global issues, including combating terrorism;

Vietnam is an authoritarian state ruled by the Communist Party of Vietnam. While Vietnamese law prohibits arbitrary interference with human rights, the Vietnamese government has a history of not respecting these prohibitions; and

Thailand is a constitutional monarchy, with a parliamentary democracy. While a military junta seized control of the government following a coup in 2014, in 2019 it held democratic elections.

Findings of Fact

Applicant is a 30-year-old employee of a U.S. defense contractor for whom he has worked since 2012. He is a U.S. citizen by birth, as are all of his nuclear family members. He has a high school diploma and earned a bachelor's degree in 2014. Both schools from which Applicant graduated are located in the U.S. He has not been married and has no children. He owns no foreign property, nor does he have any

foreign financial interests. He has not had any travel outside of the United States in the last seven years. He was awarded a security clearance in January 2019. (Items 3, 4, 5)

Applicant uses social media, including dating applications, in order to communicate with foreign nationals. In about January 2019, a stranger located in what Applicant believes was the Philippines (the Scammer) posed as a female online, and coerced Applicant into exposing himself over a video call. The Scammer video recorded the Skype video call. The Scammer then determined Applicant's identity through Applicant's social media presence, and threatened to send a snapshot of the compromising video to Applicant's friends, co-workers, and family unless Applicant paid him money. Applicant panicked, and over the next two days, sent the Scammer two electronic wire transfers totaling \$1,000. When the Scammer refused to destroy the compromising data unless Applicant sent him even more money, Applicant refused to send additional funds and blocked the Scammer from communicating with him. Applicant also made his profile and friends lists on social media private. In February 2019, Applicant self-reported this extortion to his security officer at his place of employment. Applicant's employer created an incident report, but took no further action against Applicant related to this incident. Applicant's family, his roommate, and his employer are aware of this incident. Applicant claims that he has learned a valuable lesson from being extorted online and claims that he takes more precaution with whom he decides to correspond when he uses dating websites. He also claims that he has not been the subject of additional instances of online scams or extortion. (Items 1, 2, 4, 5)

In July 2016, Applicant met a Chinese national, Ms. A, on an online dating site. Ms. A was temporarily in the United States working at a theme park. Applicant and Ms. A dated, communicating in-person and online. Applicant's relationship and communication with Ms. A ended in August 2016. (Items 1-3)

In December 2016, Applicant met a Chinese national, Ms. B, on an online dating site. Applicant believes Ms. B was in the United States on a work visa, and was working for a theme park. They went on two dates together and then only communicated online after those two dates. Applicant believes that Ms. B moved back to China in February 2017. Applicant has not communicated with Ms. B since February 2017. (Items 1-4)

In June 2017, Applicant met a Chinese national, Ms. C, on an online dating site. Ms. C was temporarily in the United States working at a theme park. Applicant and Ms. C dated, communicating in-person and online from June 2017 until September 2018, when Ms. C moved back to China. Once Ms. C moved back to China, they only communicated online until they ended their relationship later in September 2018 because of the difficulty of a long distance relationship. Applicant broke up with Ms. C over e-mail and received a response from Ms. C that he has not read. Applicant claimed he did not read the letter from Ms. C to avoid getting back together with her, but admitted that he still has this e-mail and may read it in the future. (Items 1-4)

In January 2017, Applicant met a Chinese national, Ms. D, on a social media site. They met in person for three consecutive days and then only communicated online afterwards. Their last communication was online in October 2017 when Ms. D asked for

Applicant's Netflix account information so that she could watch online programming. While it is not clear whether Applicant provided Ms. D with his Netflix account information, it can be reasonably deduced that he did because he indicated that he looked to see if there was evidence of Ms. D using his Netflix account, but he could not find any. It is logical that he would have only suspected that she would use his Netflix account information if he provided it to her. (Items 1-4)

In April 2017, Applicant met a Vietnamese national, Ms. E, on an online dating site. They met in person once and then only communicated online. Applicant last communicated with Ms. E in September 2017. (Items 1-4)

In March 2017, Applicant met a Thai national, Ms. F, on an online dating site. He met her in person when he went on two dates with her and then communicated with her electronically. Applicant last communicated with Ms. F in April 2017. (Items 1-4)

Applicant continued to use social media to communicate with foreign nationals after his 2019 incident where he was scammed and extorted. In June 2019, Applicant met a Japanese national, Ms. G, on an online dating site. Ms. G was temporarily in the United States working at a theme park. Applicant and Ms. G dated, communicating in-person and online. Applicant and Ms. G maintained a romantic relationship until early 2020 when they stopped dating, but maintained a platonic relationship. The latest evidence provided that Applicant and Ms. G communicate electronically "nearly daily." (Items 1, 2, 4)

In April 2019, Applicant met a Japanese national, Ms. H on an online dating site. He developed a platonic online friendship with Ms. H and maintains contact via text and telephone on a weekly to monthly basis. Applicant believes that Ms. H is a resident of Tokyo. (Items 1, 2, 4)

Applicant does not believe that any of the foreign nationals with whom he has contact are members of a foreign military or government. He claims that he does not feel vulnerable to coercion or duress to divulge secured or protected information as a result of his aforementioned foreign contacts. He claims that he could not be coerced or blackmailed into acting against the interests of the United States and that none of these foreign contacts are aware that he has access to secured information as he has never discussed the topic with them. He claims that he has not developed a preference for any foreign country or foreign individuals but that he has simply developed a romantic preference for women of Asian descent. With the exception of his romantic and platonic relationships with the aforementioned women, there is no record evidence that Applicant has any foreign involvement.

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2,

1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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

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

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

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

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

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

Analysis

Guideline D, Sexual Behavior

The security concern for sexual behavior is set out in AG ¶ 12:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and

(d) sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

Applicant engaged in activity of a sexual nature over a video conference call that was recorded with a person he did not know, resulting in him being extorted twice for approximately \$1,000. His actions made him vulnerable to (and resulted in) coercion, exploitation, or duress and reflected a lack of judgment. Both of the above disqualifying conditions are applicable and the burden shifts to Applicant to provide evidence in mitigation.

Conditions that could mitigate sexual behavior security concerns are provided under AG ¶ 14. The following are potentially applicable:

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

(c) the behavior no longer serves as a basis for coercion, exploitation, or duress; and

(d) the sexual behavior is strictly private, consensual, and discreet.

Applicant has not provided sufficient evidence of any of the above mitigating conditions. Applicant claimed he is more careful with whom he communicates online, and that he has made his profile and friends lists on social media private. However, it is unclear from the record evidence whether Applicant still engages in videoconferences of a sexual nature with strangers. Without such evidence, Applicant has failed to show that his behavior is unlikely to recur, that it can no longer serve as a basis for coercion,

exploitation or duress, or that it is discreet. Accordingly, his conduct continues to cast doubt on his reliability, trustworthiness, and good judgment.

Guideline B, Foreign Influence

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

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

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

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and
- (i) conduct, especially while traveling or residing outside the U.S., that may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant has had in-person and online contacts with several foreign women, including multiple women who are citizens of China. China has an authoritarian government, dominated by the Communist Party, with a poor human rights record, and aggressively targets the U.S. for espionage. Applicant's Chinese connections create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. Applicant also had online contact with an individual who he believes is a citizen of the Philippines who successfully exploited and coerced Applicant into substantially acting against his pecuniary interests. The above disqualifying conditions have been raised by the evidence and the burden shifts to Applicant to provide evidence in mitigation.

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

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

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

(c) contact or communication with foreign nationals is so casual and infrequent that there is little likelihood that it could create a risk of foreign influence or exploitation; and

(d) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

There are several reasons why Applicant's disqualifying behavior is partially mitigated. He has ceased his contact with all listed foreign individuals, but for citizens of Japan. Japan has a stable democracy and is an important ally of the United States. These factors make it unlikely Applicant will be placed in a position of having to choose between the interests of a citizen of Japan and the interests of the United States.

Applicant has strong and longstanding ties to the United States. He is a U.S. citizen by birth, has lived in the U.S. all his life, and his entire nuclear family are citizens and residents of the United States. Applicant was educated in the U.S. and his job is in the U.S. He holds no foreign financial or property interests. Applicant's relationships with the foreign individuals that he has dated or had contact with have been short-lived and casual. Accordingly, there is some evidence that Applicant can be expected to resolve any conflict of interest in favor of the U.S. interest.

However, the allegation in SOR ¶ 2.d is problematic. A foreign individual was successful in significantly manipulating or coercing Applicant. He twice acted against his own interests by paying the foreign individual a substantial sum of money. While he later reported this incident to the security officer of his employer, he did so after being coerced into doing the foreign individual's bidding. The foreign individual was not asking for U.S. secrets or secured information this time, but the fact pattern here is far too close to a scenario that Guideline B seeks to avoid. Applicant has not indicated that he

has stopped engaging in the same, risky behavior with foreign nationals. Despite the partial applicability of multiple mitigating factors, there is insufficient evidence for Applicant to overcome this incident, especially when there is little to no evidence that he has stopped exposing himself to the risk that caused him to be exploited by a foreign contact in the past.

Guideline E, Personal Conduct

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

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 the national security investigative or adjudicative processes.

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

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

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;

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

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

As discussed herein, Applicant's aforementioned exploitation because of his risky sexual behavior and his relationships with foreign women is sufficient for an adverse determination under other guidelines. Therefore, AG ¶¶ 16(c) and 16(d) are not raised. Applicant's activity alleged in SOR ¶ 3.a can (and did) create a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. AG ¶ 16(e) is raised by Applicant's online sexual video conferencing that resulted in him being exploited.

Applicant's contact with foreign women in person and online does not, in and of itself, create a vulnerability to extortion, manipulation or duress. This behavior is not illegal in the United States and there is no evidence that it is illegal in other countries. If known, Applicant's contacting foreign women over social media would not likely affect Applicant's personal, professional, or community standing. The information contained in SOR ¶ 3.b is not disqualifying under Guideline E.

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

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

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

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

Applicant has not proven that he no longer has videoconference calls with strangers (foreign or otherwise) where he engages in acts of a sexual or compromising nature. Without such evidence he has not shown that this behavior is unlikely to recur or that he has reduced or eliminated his vulnerability to exploitation, manipulation, or duress. On the record evidence, none of the mitigating factors under AG ¶ 17 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 have incorporated my comments under Guidelines D, B, and E in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude that it is not clearly consistent with the national interest to continue Applicant's security clearance.

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 D:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	For Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	For Applicant

Paragraph 3, Guideline E	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin R. Dorsey
Administrative Judge