



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



In the matter of: )  
)  
) ISCR Case No. 20-00387  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Raashid S. Williams, Esq., Department Counsel  
For Applicant: G. Robinson Stratton III, Esq.

09/14/2022

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns, but he failed to mitigate the personal conduct concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 17, 2020, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (DCSA CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The DCSA CAF acted 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 effective June 8, 2017 (AG).

Applicant answered the SOR on August 20, 2020, and he requested a hearing before an administrative judge. I was assigned the case on April 5, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 26, 2022, and

the hearing was convened as scheduled on May 24, 2022. The Government offered exhibits (GE) 1-9, which were admitted into evidence without objection. The Government's exhibit list and pre-hearing discovery letter were identified as hearing exhibits (HE) I-II. Applicant testified and offered exhibits (AE) A-K, which were admitted without objection. The record remained open to allow Applicant to submit additional documentary evidence. He submitted AE L-U, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 2, 2022.

### **Evidentiary Ruling**

Applicant moved (in limine) to suppress a sworn statement made to military police authorities by Applicant's ex-girlfriend (GF) on August 25, 2012, on the basis of not being able to cross examine GF about the statement. I denied the motion, but I also indicated that I would consider what weight I would give the statement based upon all the facts and circumstances presented upon the close of all the evidence. Having reviewed all the evidence in the case, I have decided to give GF's statement no weight because I deem it unreliable given the circumstances of the case.

### **Findings of Fact**

Applicant denied all the allegations. After a review of the pleadings and evidence, I make the following findings of fact.

Applicant is a 63-year-old employee of a federal contractor. He began working at his present job in August 2018. He is an engineer and worked for other federal contractors from 1993 to 2012. He has a master's degree and is working towards completing a PhD program. He served in the U.S. Air Force from 1977 to 1979 when he was honorably discharged. He is divorced (his previous marriage was from 1987-2004). He has three adult children. He previously held a security clearance. (GE 2)

The SOR alleged under Guideline F that Applicant filed for Chapter 13 bankruptcy protection in August 2012, which was dismissed for his failure to make the required plan payments. It also alleged an unpaid judgment against Applicant in the amount of \$10,079. (SOR ¶¶ 1.a-1.b) Bankruptcy court records (case # 12-05360-jw), a LexisNexis state judgment and lien filings document, and Applicant's answers to his August 2018 security clearance application (SCA) establish the allegations. (GE 2, 5, 6)

Under Guideline E, the SOR alleges that in December 2012, Applicant was debarred from a military installation where he both lived and worked. The debarment was based upon an investigation into Applicant's involvement in activities of GF, who was living with Applicant at the time. These activities included possible involvement in prostitution and illegal drug use, possession, and distribution.

### **Financial Considerations:**

Applicant testified that he experienced financial difficulties because debts lingering from his divorce in 2004 and because of his involvement with GF from about December

2011 to August 2012. When he was involved with GF, he allowed her access to his bank account and credit cards. He discovered that she abused his trust by charging extensively on the credit cards and taking significant amounts out of the bank account. He found himself unable to pay his bills and sought relief through filing a Chapter 13 bankruptcy plan. He made a few payments under the plan, but when he lost his job as a result of the debarment order in late 2012, he was unable to continue making payments under the plan and it was dismissed. He stated that since that time he paid off many of the creditors that were listed in the bankruptcy. His current credit reports reflect that he is paying all his debts in a timely fashion and no collection or charged-off accounts are indicated. The judgment listed in the SOR is not reflected in any of the Government's or the Applicant's credit reports. In 2021, Applicant contacted the judgment creditor, who indicated that there was no active account. (Tr. 41-45, 112-113; GE 5-9; AE A-J)

### **Personal Conduct:**

Applicant met GF in about 2009 at a gentlemen's club (he referred to it as a "strip club") in the city where he was working at the time. He frequented the establishment regularly. She was a dancer at the club. GF was then married to a military member. Applicant struck up a non-romantic relationship with GF. He even helped GF and her husband buy a car by loaning them money. Sometime in 2011, GF and her husband separated and eventually divorced. Applicant was aware that GF abused alcohol. (Tr. 37-38, 63, 67-68, 73)

In December 2011, Applicant accepted a job position located on a military base in another part of the country. In January 2012, Applicant and GF started a romantic relationship. He invited GF to live with him at his new location, which was on base. They both moved to this new location in January 2012. Early on they had a fairly normal relationship. GF was hired at a local hotel to perform housekeeping duties. She did not like that work so she quit. In March she began dancing at a local gentlemen's club. GF asked Applicant for money to buy cocaine and he provided it. He also provided money for her to buy cocaine for the purpose of selling it. Applicant admitted this conduct when interviewed by base law enforcement in August 2012. During his testimony, he admitted providing GF the money, but he denied that he knew it was for the purchase of cocaine. He claimed that he only became aware of the cocaine aspect after he had given her the money and when she told him she used the money on cocaine. After reviewing the context of his August 2012 statement to law enforcement, I do not find his hearing testimony credible. (Tr. 76-78, 81, 97; GE 4 (pp.8-9))

While living in base housing, Applicant filmed GF dancing a "strip tease" that they could post on a website. Applicant also agreed to video GF and another man engaging in sexual activity, but this did not occur because GF and the other man were too drunk to film. Applicant believed that GF was engaging in prostitution in the local area where they resided and using his credit cards to pay for multiple hotels in the area. In June 2012, Applicant and GF traveled to a different state and stayed at a local hotel. GF wanted to engage in prostitution and have Applicant film her actions. He agreed to do so. GF had sex in the hotel room with a soldier and Applicant filmed it. Applicant stated that he thinks the soldier gave GF money after they were done. At the hearing, during cross-

examination, Applicant was asked why he agreed to participate by filming GF's prostitution. He replied that he was trying to get her out of prostitution and if it took her getting into the pornography business to do so, he was willing to help that happen. (Tr. 85, 88, 93, 95; GE 4 (pp. 9, 11-12))

Applicant cut GF off financially in late June 2012. He was concerned that GF and her friends had brought drugs into his base house so he notified base law enforcement and consented to a search of his house. No drugs were found. An investigation ensued that ultimately led to Applicant being debarred from the base in October 2012. Because he could not enter the base, he was unable to perform his job and subsequently submitted a voluntary letter of resignation in December 2012. Applicant was not prosecuted by state or federal officials for any violations of law. (Tr. 98, 108-109; AE L-U)

Applicant testified that he has improved his life in the last 10 years by cleaning up his financial matters and by pursuing his PhD. The only contact he has had with GF since August 2012 was when she contacted him through social media in approximately 2019 and he told her to leave him alone and then he blocked her on the media platform. (Tr. 110, 112, 114)

### **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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

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

## **Analysis**

### **Guideline F, Financial Considerations**

AG ¶ 18 expresses the security concern for financial considerations:

Failure to live within one’s means, satisfy debts, and 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts; and
  
- (c) a history of not meeting financial obligations.

Applicant filed a Chapter 13 bankruptcy in 2012 that was dismissed in 2013 for failure to make his plan payments. He also incurred an unpaid judgment in 2008. I find the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially applies:

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial documentation supports that he has paid many of the underlying debts which led to his 2012 bankruptcy filing. Additionally, the judgment no longer appears as a matter of record and is therefore resolved. The above mitigating condition applies.

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

AG ¶ 15 expresses the personal conduct security concern:

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 in this case. 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;

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

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

(g) association with persons involved in criminal activity.

Applicant was a co-participant or accessory to GF's illegal and questionable actions while they were together as a couple in 2012. These actions included engaging

in prostitution, recording GF strip tease dancing in Applicant's base housing, recording GF's sexual activity with a soldier, which Applicant believed was an act of prostitution, and allowing GF to use his financial resources to buy drugs and engage in prostitution. Applicant's active role in these criminal activities of GF shows questionable judgment, unreliability, untrustworthiness, and a vulnerability to exploitation. All the above disqualifying conditions apply.

AG ¶ 17 describes conditions that could mitigate 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

(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.

Although Applicant's actions with GF happened approximately 10 years ago and there is no evidence that they have happened since then, it is troubling that a 53-year-old man who is well educated and has held a security clearance could be so influenced by a younger woman to allow himself to get involved in her nefarious activities, some of which took place on a military base. His involvement with her over this short period of time also contributed to his financial difficulties. While Applicant has ceased contact with GF, there is no evidence that he participated in any counseling to change his behavior. While some aspects of each mitigating condition apply, on the whole because of Applicant's overall lack of good judgment, his actions are not mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to

which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's contractor service and the circumstances surrounding his involvement with GF and her illegal activities. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations security concerns, but that personal conduct concerns were not mitigated.

### **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
Subparagraph: 1.a:	Against Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs: 2.a – 1.b:	For Applicant

### **Conclusion**

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

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Robert E. Coacher  
Administrative Judge