



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



In the matter of: )  
)  
) ISCR Case No. 22-00766  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

12/05/2022

**Decision**

HYAMS, Ross D., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 25, 2020. On May 15, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline D – sexual behavior, Guideline E – personal conduct, and Guideline J – criminal conduct. He responded to the SOR on May 18, 2022, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record in lieu of a hearing.

On June 9, 2022, Department Counsel submitted the Government’s file of relevant material (FORM) including Items 1 through 7. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. He received the FORM on June 22, 2022, and provided a response on June 27, 2022 (Response), along with Applicant’s exhibits (AE) A and B. The case was assigned to me on September 6, 2022. Items 1 and 2 are the SOR and Applicant’s Answer, which are the pleadings in the case. Items 3 through 7 are admitted without objection. AE A and B are admitted without objection.

## Findings of Fact

In his Answer, Applicant admitted SOR allegations ¶¶ 1.a, 1.b (in part), and 3.a. He denied SOR allegations ¶¶ 2.a and 2.b. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 45 years old. He was married in 2000, and divorced in 2018. He has two minor children with his former wife. He earned a bachelor's degree in 1999 and a master's degree in 2007. He has worked for a large defense contractor since 2001, and is employed as a support planning and management engineer. He has held a security clearance since 2001. (Items 3, 4)

In March 2019, Applicant was arrested as part of a police sting operation, for patronizing a prostitute. He responded to an advertisement on a website known for prostitution. The advertisement was posted and monitored by an undercover detective in the local police department. Applicant exchanged several text messages with the undercover detective, and requested a sex act in exchange for money. He went to the designated meet-up location, which was a local motel, and requested the room number by text message. He was stopped by police leaving the motel parking lot. During the stop, the detective confirmed that Applicant's phone was used to respond to the advertisement and send the text messages. After being charged with patronizing a prostitute, he entered a plea deal and the charge was reduced to criminal trespass. He pled guilty and received an 18-month deferred sentence, a fine, a requirement to attend "John school," and take an HIV test. He was also ordered to stay away from the motel where he was arrested and any online websites hosting personal ads for dating services. (Item 5, 6, 7)

Applicant was also stopped in 2005 by police for picking up two prostitutes on the street, one who was a minor at the time. The record states that after the stop, he told the officer that he believed the women were prostitutes. He was not arrested, but the officer gave him a verbal warning. (Item 6, 7)

In Applicant's July 2020 background interview with a government investigator, he reported that he had patronized prostitutes in 2015 during a period of turbulence in his marriage. He initially described these encounters as affairs with "many women," but later admitted to the investigator that these women were prostitutes. His wife discovered his activities because the money he was spending appeared suspicious on their financial statements. This circumstance resulted in her filing for divorce. (Item 5).

In Applicant's September 2021 background interview, he admitted that he has a sex addiction. He also stated that he would not engage in this behavior again, and claimed that he was controlling his urges. He reported that he was seeking anonymous group counseling, through an online virtual service. (Item 5)

In his Response, Applicant stated that he was diagnosed with sex addiction in 2015, and had participated in several years of counseling. He also reported that, in 2015, he began attending weekly meetings of Sex Addicts Anonymous, which is a 12-step

program. He attended those meetings in person until 2020, and then virtually because of the pandemic. It is unknown whether he is still attending these meetings. He stated that after his 2019 arrest, he sought comprehensive addiction treatment for three weeks at an inpatient facility. (Response)

Applicant submitted a letter from his former counselor that states that he attended therapy with her from 2015 through 2020, and that he sought treatment for sexual compulsivity issues, and struggled with depression and anxiety. He also submitted a letter from a rehabilitation center that states in March and April 2019, he received a 21-day inpatient residential clinical and therapeutic treatment. It does not state for what condition he was treated. No assessment, prognosis, or further information was provided by either treatment provider. (AE A, B)

The SOR alleges:

SOR ¶ 1.a: Applicant was arrested in March 2019 and charged with patronizing a prostitute. He admitted the allegation. (Item 2, 3, 4, 5, 6, 7)

SOR ¶ 1.b: Applicant engaged in solicitation of prostitutes in about 2015 and was questioned by police. He admitted engaging in solicitation in 2015, but denied being questioned by police in 2015. The Government submitted evidence showing that he was questioned by police in 2005, not 2015. (Item 2, 5, 6, 7)

SOR ¶ 2.a: Applicant failed to report his charge for patronizing a prostitute to his employer's facility security officer (FSO), as required by the National Industrial Security Program Operating Manual (NISPOM). He denied the allegation and claims that his failure to report was a misunderstanding. He explained that he thought that he did not have to report the incident until he filled out his next SCA, which was submitted about a year later. He claimed that he did not intend to hide the arrest. He discrepantly also asserted that he asked the FSO for a form to report the adverse information, and was told there was not one. He stated that he did not understand the reporting process in 2019, and was unaware of any reporting issue until he received the SOR in May 2022. He admitted that he told a former co-worker about his arrest, but not his manager or then current co-workers. (Item 2, 5; Response)

SOR ¶ 2.b: Cross-alleged the allegations in ¶¶ 1.a and 1.b under Guideline E (personal conduct). Applicant denied the allegations on the basis that it is redundant. (Item 2)

SOR ¶ 3.a: Cross-alleged the allegations in ¶¶ 1.a and 1.b under Guideline J (criminal conduct). Applicant admitted the allegation. (Item 2)

Applicant stated that he has had a security clearance for 20 years, and has always safeguarded classified information. He admitted making mistakes of personal conduct, and that he continued to take steps so that he does not repeat those mistakes. (Response)

## 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 financial considerations 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 13. The following are potentially applicable in this case:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (b) pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop; and
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.

SOR ¶ 1.a is supported by Applicant's admissions, the court and police records, and his background interviews. AG ¶¶ 13(a), 13(b), and 13(c) apply.

In SOR ¶ 1.b, the record shows that Applicant solicited prostitutes in 2015, but the Government did not establish the second part of the allegation - that he was questioned by police in 2015. The record shows that he was questioned by police in 2005. AG ¶¶ 13(a), 13(b), and 13(c) apply.

Conditions that could mitigate the 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 judgment;
- (c) the behavior no longer serves as a basis for coercion, exploitation, or duress;
- (d) the sexual behavior is strictly private, consensual, and discreet; and

(e) the individual has successfully completed an appropriate program of treatment, or is currently enrolled in one, has demonstrated ongoing and consistent compliance with the treatment plan, and/or has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.

AG ¶ 14(b) does not apply. The record shows that Applicant was patronizing prostitutes from at least 2005 - 2019. While he has had therapy, he did not submit sufficient evidence about his current condition or prognosis. I am unable to find that it occurred under such unusual circumstances that it is unlikely to recur, and that it does not cast doubt on his current reliability, trustworthiness, and judgment.

AG ¶ 14(c) does not apply. Applicant's solicitation and patronizing of prostitutes serves as a basis for coercion, exploitation, and duress.

AG ¶ 14(d) does not apply. Applicant's solicitation of prostitutes, both online and on the street is not private or discreet. His behaviors have come to the attention of his former wife and the police at least two times, the most recent time resulting in his arrest.

AG ¶ 14(e) does not apply. While Applicant has engaged in therapy, a rehab program, and a 12-step program, he did not provide sufficient evidence showing that he successfully completed an appropriate program of treatment for his sexual addiction, or is currently enrolled in one. He did not provide sufficient evidence showing that he has demonstrated ongoing and consistent compliance with the treatment plan, or has received a favorable prognosis.

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

AG ¶ 15 details 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...

I have considered the disqualifying conditions for drug involvement under AG ¶ 16 and the following is potentially applicable:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

(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.

SOR ¶ 2.a is found for Applicant. The NISPOM (DoD 5220.22-M) provides policy and procedures for cleared contactor companies to handle and protect classified information. It was not written to apply to individual persons. While Applicant admitted that he did not inform his manager or co-workers about his arrest, the Government did not provide sufficient evidence showing that he violated his employer's reporting and security policies and procedures.

SOR ¶ 2.b cross-alleged the allegations in ¶¶ 1.a and 1.b, which were established under Guideline D. AG ¶ 16(e) applies.

I have considered the mitigating conditions under AG ¶ 17. The following 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; and

(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.

AG ¶ 17(c) does not apply. The offense was not minor. Applicant's sexual behavior was criminal in nature, and he was arrested for it in 2019. There is insufficient evidence to find there is mitigation by the passage of time, the behavior is infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on his reliability, trustworthiness, and good judgment.

AG ¶ 17(c) partially applies. While the record shows that Applicant has had counseling to address his sexual compulsivity issues, he did not provide sufficient evidence to find that he has taken the necessary steps to alleviate stressors, circumstances, or factors that contributed to his untrustworthy, unreliable, and

inappropriate behavior. He did not provide sufficient evidence to find that such behavior is unlikely to recur.

### **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern for criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes several conditions that could raise security concerns under AG ¶ 31. The following are potentially applicable in this case:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

SOR ¶ 3.a cross-alleged the allegations in ¶¶ 1.a and 1.b, which were established under Guideline D. AG ¶ 31(b) applies.

I have considered the mitigating conditions under AG ¶ 32. The following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

AG ¶ 32(a) does not apply. Applicant's sexual behavior was criminal in nature, and he was arrested for it in 2019. There is insufficient evidence to find there is mitigation by the passage of time, that it is unlikely to recur, and does not cast doubt on his reliability, trustworthiness, and good judgment.

AG ¶ 32(d) does not apply. While Applicant provided some evidence of counseling, he did not provide sufficient evidence to find that there has been successful rehabilitation, mitigation by the passage of time, restitution, good employment record, or constructive community involvement. Other factors are not applicable.



## **Whole-Person Concept**

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

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines D, E, and J 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. Applicant did not provide sufficient evidence to mitigate the security concerns arising out of Applicant's sexual behavior, personal conduct, and criminal conduct.

## **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-1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against 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.

---

Ross D. Hyams  
Administrative Judge