



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



In the matter of:)	
)	
)	ISCR Case No: 21-02431
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne M. Driskill, Esquire, Department Counsel
 For Applicant: *Pro se*
 03/23/2023

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the security concerns raised under the financial considerations, foreign influence, sexual behavior, and personal conduct guidelines. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On July 5, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations), Guideline B (Foreign Influence), Guideline D (Sexual Behavior), and Guideline E (Personal Conduct). Applicant responded in a July 13, 2022 Answer to the SOR, and requested that his case be decided by an administrative judge on the written record without a hearing. He did not submit any documentation with his Answer. (Item 1)

On September 20, 2022, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant on September 23, 2022, and received by him on October 15, 2022. The FORM notified Applicant that he had an opportunity to file objections and

submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit a response or objections to the FORM within the time provided. Items 1 through 8 are admitted in evidence. On February 9, 2023, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

Department Counsel also submitted a request for administrative notice of certain facts about the Philippines in the FORM. The facts detailed in the official U.S. Government publication that was attached to the request were neither disputed nor objected to by Applicant. Accordingly, I take administrative notice of those facts, a summary of which will be included in the following findings.

Findings of Fact

In his Answer, Applicant admitted the following allegations: SOR ¶¶ 1.a, 1.c, 1.d, 1.e, 1.g, 1.i, 1.k, 1.l, 1.m, and 1.n. He denied the allegations in SOR ¶¶ 1.b, 1.f, 1.h, and 1. j. He admitted the allegations in SOR ¶¶ 2.a and 2.c; he denied the allegations in SOR ¶¶ 2.b and 2.d. His admissions are incorporated into these findings of fact. He did not answer the allegations in SOR ¶ 3.a, and in SOR ¶ 4.a; hence, they will be construed as denials. (Item 1) After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old and has been married three times. From 2006 to 2008, he was married to Wife 1. They resided in the United States. From 2015 to 2017, he was married to Wife 2. They resided in South Korea. In 2018, he married Wife 3 in the Philippines. She, his two children, and a stepchild reside there. At the time he completed his SCA, he was residing in South Korea (Item 2)

Applicant graduated from high school in 2000. He served in the Army from 2001 to 2018, when he was honorably discharged. In November 2011, he received a security clearance with a warning that if he failed to resolve his delinquent debts, his clearance could be suspended. (Item 2, Item 7)

In January 2020, Applicant began a position with a defense contractor. In July 2020, he submitted a security clearance application (SCA). Prior to this position, he worked for two other defense contractors during 2019. He reported that he has been living in South Korea since January 2020. (Item 2)

In February, March, and May 2021, a government investigator interviewed Applicant about background information. Subsequently, the Government sent him interrogatories, which included a report of his enhanced subject interview. Applicant verified that the information contained in the report was accurate. (Item 3)

Financial Considerations

Based on Applicant's admissions and credit bureau reports (CBR) from September 2022, July 2021, and July 2020, the SOR alleged 12 delinquent debts totaling \$57,815, which became delinquent between 2015 and 2022. (Items 4, 5, and 6) The status of those debts is as follows:

Applicant admitted owing the debts in SOR ¶¶ 1.a (\$25,016); 1.c (\$2,494); 1.d (\$1,336); 1.e (\$1,260); 1.g (\$463); 1.i (\$337); 1.k (\$3,759); and 1.l (\$13,694). They total \$48,359. Applicant did not submit evidence to prove they are paid or being paid.

Applicant denied owing the debts in SOR ¶¶ 1.b (\$7,456); 1.f (\$1,228); 1.h (\$436); and 1.j (\$336). He presented proof that he resolved the \$7,456 debt in SOR ¶ 1.b. (Item at 7). He did not provide documentation that he resolved the other three, which total \$772.

During a February 2021 interview, Applicant did not recognize all of the debts that the government investigator asked him about but said he would pay those that are legally his obligation. He said he did not have money to pay his debts because his former wife, Wife 2, created a financial hardship for him and spent all his money. He also disclosed that he was paying the Defense Finance and Accounting Services (DFAS) 15% of his salary through a garnishment. He owed \$13,694 for a part of the reenlistment bonus he received but was not entitled to because he left the Army before the end of the enlistment period. (Item 2 at 50, Item 3 at 5, 8, 10)

Under Guideline F, the SOR alleged in ¶ 1.m that in October 2018, Applicant received nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) Article 92, for wrongfully borrowing money from two junior enlisted soldiers, and Article 134, for dishonorably failing to repay another junior soldier from whom he borrowed money for personal expenses. He was subsequently reduced in rank, forfeited pay, and received an oral reprimand. Applicant disclosed this information during his February 2021 interview. (Item 1, Item 3 at 3-4)

The SOR alleged in ¶ 1.n that in November 2016, Applicant received NJP for a violation of the UCMJ, Article 107, for making multiple false statements that he was obtaining funds to help him pay his rent, and a violation of Article 134 for dishonorably failing to then pay his rent. He received an oral reprimand, 45 days of extra duty, and a reduction in rank. At the time he made the false statements, he was in Belgium and told the soldier that he would obtain the money from his wife, who was in a different country, to repay the money he borrowed. (Item 2, Item 3 at 3-4)

Foreign Influence

As noted above, I take administrative notice of the facts about the Philippines that were set forth in the official U.S. Government publications that were attached to Department Counsel's request for administrative notice. These include that the

Philippines are a constitutional republic with a bicameral legislature. Its citizens and foreigners have been targeted by domestic and transnational terrorist groups for many years. The U.S. State Department warns U.S. citizens to reconsider travel to the Philippines due to the presence of terrorism, crime, civil unrest, and rampant kidnappings. There are significant human rights abuses with respect to detainees and personal freedoms. (Item 8)

In response to SOR ¶ 2.a, Applicant admitted that his wife, two children, his stepchild, father-in-law, and mother-in-law are citizens and residents of the Philippines. In his July 2020 SCA, he reported that the last time he saw his family was in January 2020 when he visited them. He sees his in-laws whenever he visits his children. He said his family does not have connections to the Philippines' government or military. (Item 2 at 6-7, 31-39) During his interview in February 2021, he reported that he visited his family in the Philippines from November 2018 to March 2019, and in September 2019 for fourteen days. He also traveled there in 2015 to see his former spouse, Wife 2. (Item 3 at 7)

During his February 2021 interview, Applicant stated that he and his current spouse, Wife 3, own a residence in the Philippines, which his wife purchased in 2019. The property has a value of about US \$3,000. His relatives are aware of their ownership of the property. (Item 3 at 6) In his Answer to SOR ¶ 2.b, Applicant denied owning the property, but offered no explanation for his denial.

During his February 2021 interview, Applicant admitted that since November 2020, he had been having an affair with a woman who is a Moroccan citizen. He said that he had daily contact with her since then. He was living in South Korea at the time. (Item 3 at 7)

In his Answer to SOR ¶ 2.c, which alleged that he failed to report that affair to his employer, Applicant admitted that he did not report it because he was starting to divorce Wife 3. He did not think his wife was aware of his infidelity. (Item 3 at 7)

In his Answer to SOR ¶ 2.d, which alleged that Applicant had been conducting an extramarital affair with a foreign person since November 2020, while residing outside of the United States, Applicant denied the allegation. He provided no information explaining the discrepancy between his admission during his interview and his denial in his Answer.

Sexual Behavior

In SOR ¶ 3.a, the Government cross-alleged under this guideline the allegations in SOR ¶ 2.c and SOR ¶ 2.d. Applicant admitted the allegation in SOR ¶ 2.c, and denied the allegation in SOR ¶ 2.d, which is inconsistent with his previous admission.

Personal Conduct

In SOR ¶ 4.a, the Government cross-alleged under this guideline the allegations in SOR ¶¶ 1.m, 1.n, 2.c, and 2.d. As noted above, Applicant admitted all allegations, except SOR ¶ 2.d, to which he gave an answer inconsistent with a previous admission, and without an explanation.

Policies

The national security eligibility action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which became effective within the DoD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 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 pertaining to 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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 describes conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional breaches of trust.

Applicant has a history of financial problems. Between 2015 and 2022, he accumulated about \$57,815 of delinquent debts, all of which he has been unable to resolve, except for one \$7,456 debt. In addition, he received NJP in 2016 and 2018, for violating UCMJ Articles 107, 134, and 92. He wrongfully borrowed money from two junior soldiers and failed to repay them, and he made false statements about obtaining money to pay his rent and then failed to pay it. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 20 provides conditions that could mitigate financial considerations security concerns:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

There is insufficient evidence to establish mitigation under any of the above mitigating conditions. Applicant's delinquent debts have been ongoing since 2015 and continue to cast doubt on his reliability and judgment. AG ¶ 20(a) does not apply. Applicant attributed his delinquent debts to his former wife, whom he said spent his money and created financial hardships for him. That may have been a circumstance beyond his

control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He did not provide sufficient evidence to demonstrate that he attempted to responsibly manage his debts as they were accumulating. AG ¶ 20(b) partially applies.

Applicant did not provide evidence that he participated in financial counseling. He provided evidence that he resolved one of the 12 alleged debts. Other than that debt, there is insufficient evidence from which to conclude there are clear indications that his delinquent debts are under, or coming under, control. AG ¶ 20(c) applies to SOR ¶ 1.b but does not apply to the remaining 11 debts. He did not submit evidence that he made an effort to establish a plan to resolve his debts. AG ¶ 20(d) does not apply.

AG ¶ 20(a) partially applies to the debts in SOR ¶ 1.m because the debts generated when he borrowed from subordinates have not recurred. He is no longer in the Army, and he cannot borrow funds from subordinates. However, they are not fully mitigated because he did not prove he paid restitution for wrongfully obtaining funds from his subordinates.

Guideline B: Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying 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;

(c) failure to report or fully disclose, when required, association with a foreign person, group, government, or country;

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion;

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest; 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.

The mere possession of close family ties with a person who is a citizen of, or has close family members residing in a foreign country, is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant has familial connections with his wife, two children, one stepchild, and two in-laws, who are citizens and residents of the Philippines. He resides with them when he visits. He also has a property interest there through his wife. These relationships create a heightened risk of foreign pressure, coercion, and exploitation as documented by the U.S. State Department, which considers the country to pose a significant travel risk. Additionally, its human rights record causes concern. These facts place a burden of persuasion on Applicant to demonstrate that his financial interests and ongoing relationships with immediate family members and in-laws, who are resident citizens of the Philippines, do not create a heightened risk of foreign influence or pose a security risk. The evidence is sufficient to raise security concerns under AG ¶¶ 7(a), 7(e), and 7(f).

Applicant's relationship with family members in the Philippines also creates a potential conflict of interest between his obligation to protect sensitive information or technology and his desire to help family members, should they be pressured, manipulated, induced, or inclined to obtain access to such information. The evidence is sufficient to raise a disqualifying condition under AG ¶ 7(b).

Applicant admitted that while he was residing outside of the United States, he failed to report his association with a Moroccan woman, with whom he had an affair, as required by the U.S. government. The evidence establishes disqualifying conditions under AG ¶¶ 7(c) and 7(i).

AG ¶ 8 provides conditions that could mitigate these foreign influence security concerns:

(a) the nature of the relationship 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; and

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

(e) 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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant did not credibly demonstrate that it is unlikely that he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States, as a consequence of his ongoing relationships with immediate family members who are citizens and reside in the Philippines. Although he served in the U.S. Army for 17 years, his connections to the Philippines through his family may undermine any relationships and loyalties in the United States, such that if any conflict of interest arose, Applicant could not be expected to resolve it in favor of U.S. interests. There is no evidence that he has significant financial interests in the United States, only evidence that he owns a piece of property valued at US \$3,000 in the Philippines. He did not provide evidence to refute the allegation that he continues to own it. He did not provide evidence that he promptly disclosed his extramarital affair with a foreign person until his interview in February 2021. On balance, the evidence

demonstrates significant potential for conflicts of interest. Accordingly, Applicant failed to establish persuasive mitigation under AG ¶¶ 8(a), (b), (c), (e), or (f).

Guideline D: Sexual Behavior

AG ¶ 12 expresses the security concern regarding sexual behavior:

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 provides conditions that could raise a security concern and may be disqualifying:

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

During Applicant's background interview in February 2021, he disclosed that since November 2020, he had been having an affair with a Moroccan woman, while he was living in South Korea. He failed to report the relationship as required because he was concerned the information would be used against him. He subsequently denied that he was still having an affair when he submitted his Answer in July 2022; however, he did not provide corroboration for his denial. The evidence establishes the above disqualifying condition.

AG ¶ 14 describes conditions that could mitigate sexual behavior security concerns:

(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; and

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

Applicant became sexually involved with a foreign citizen in November 2020 while he was living outside of the United States. He acknowledged that he was still in the

relationship in February 2021, when he met with a government investigator. He admitted that he failed to report this information to the Government. Although he subsequently denied that he was involved with the foreign citizen in his Answer, there is no evidence to corroborate that assertion. His sexual behavior is sufficiently recent, and casts doubt on his reliability and judgment. AG ¶ 14(b) does not apply. There is no evidence to establish mitigation under AG ¶ 14(c). Applicant did not assert that his extramarital relationship was private and consensual. AG ¶ 14(d) is not established.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern regarding personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying in this case:

(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.

In 2016 and 2018, Applicant received NJPs for wrongfully borrowing money from soldiers and failing to reimburse them, and for falsely claiming that he was obtaining money to pay his rent and then dishonorably failing to pay his rent. In 2020, he began an

extramarital affair with a foreign person while he was living outside of the United States. He failed to report the affair to the U.S. government, as required. These activities, if known, could and did affect Applicant's personal and professional standing. The evidence establishes the disqualifying condition under AG ¶ 16(e)(1).

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns:

(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.

Sufficient time has not passed since Applicant's behavior occurred. In 2016 and 2018, he received NJPs. In November 2020, he began an extramarital affair with a foreign person while he was living outside the United States. He continued that affair into February 2021, and possibly longer. He did not report this relationship to the Government as required, until his background interview in 2021. There is insufficient evidence to establish mitigation under AG ¶ 17(c). He did not present evidence demonstrating that he acknowledged his wrongful behavior and obtained counseling, or has taken other steps to address the stressors that contributed to his behaviors, such that he eliminated vulnerability to duress. AG ¶ 17(d) does not apply.

Whole-Person Concept

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

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

(8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature person who is accountable for his choices and actions. He has a history of failing to comply with the law, rules, and regulations, as demonstrated by his history of poor financial management, including a garnishment by the DFAS. He has received two NJPs for financial transgressions, and been involved in an extramarital affair with a foreign citizen while residing outside of the United States that he failed to report. There is insufficient evidence to establish permanent behavioral changes in Applicant's conduct or compliance with the law, so I cannot conclude that similar conduct is unlikely to recur. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising under the financial considerations, foreign influence, sexual behavior, and personal conduct guidelines.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c through 1.n:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Paragraph 3, Guideline D:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraph 4.a:	Against Applicant

Conclusion

Considering the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for access to classified information. Clearance is denied.

Shari Dam
Administrative Judge