



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



In the matter of: )  
 )  
----- ) ISCR Case No. 20-03693  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis Esq., Department Counsel  
For Applicant: Homero Torralba, Esq.

03/31/2023  
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**Decision**  
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WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate sexual behavior and criminal conduct. Eligibility for access to classified information or to hold a sensitive position is denied.

**Statement of the Case**

On December 22, 2021, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the sexual behavior and criminal conduct guidelines the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on March 22, 2022, and requested a hearing. (Applicant's response; Tr. 17) The case was assigned to me on August 23, 2022. A hearing was scheduled for December 1, 2022, and heard on the date as scheduled. At the hearing, the Government's case consisted of eight exhibits (GEs 1-8). Applicant relied on one witness (himself) and no exhibits. The transcript (Tr.) was received on December 12, 2022.

### **Summary of Pleadings**

Under Guideline D, Applicant allegedly (a) had nonconsensual sex in February 2011 with a woman he met on a dating web-site and who reported him to enforcement authorities in 2014; (b) met various women on a dating website between September 2018 and December 2020, to whom he provided money or other items of value in exchange for sexual relations; (c) had nonconsensual sex with a woman he met on a dating web-site in December 2019, who reported to law enforcement that he had non-consensual sex with her and verbally threatened her while showing her his gun magazines, for which he was arrested and charged with kidnapping and sexual assault; and (d) a woman he previously met online reported to law enforcement in November 2020 that he had nonconsensual sex with her while she was incapacitated in or around November 2017. These allegations were cross-alleged under Guideline J.

In Applicant's response to the SOR allegations covered by Guideline D, he denied three of the four allegations with explanations and clarifications. He claimed the 2014 incident was thoroughly investigated while he was in the military and was favorably resolved. He also claimed the women he met on the dating web-site enjoyed his discretionary generosity without consummating any transactional relationships.

Admitting the allegations averred in SOR ¶ 1.c, Applicant claimed the kidnapping and sexual assault charges were dismissed and favorably resolved after the alleged victim was uncooperative and reportedly filed a false police report. Responding to the allegations covered by SOR ¶ 1.d, Applicant denied the allegations and specifically denied engaging in any nonconsensual sex.

### **Findings of Fact**

Applicant is a 48-year-old employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married in March 1998 and divorced in August 2010. (GE 1; Tr. 18) He has two children from this marriage (ages 18 and 22). He remarried in March 2014 and divorced in October 2016. (GE 1) He earned an associate's degree in April 2020. (GE 1) Applicant enlisted in the Army in September 1992 and served three years of active duty. He received an honorable discharge in September 1995. (GE 1) Following his Army discharge he enlisted in his state's Army National Guard and served two years in his

Guard unit's Active Reserve. (GE 1) He received an honorable discharge from his National Guard unit in November 1997. (GE 1)

Applicant enlisted in the Army in November 1997 and served five years of active duty before he received an honorable discharge in January 2002. (GE 1) He reenlisted in the Army in January 2002 and served another 13 years of active duty before he retired as a chief warrant officer with an honorable discharge in December 2015. (GE 1; Tr. 19) Since December 2015, Applicant has been employed by his current contractor as a safety engineer. (GE 1; Tr. 18) He has held a security clearance since February 2014. (GE 1)

### **Applicant's reported sexual encounters with women he met on dating sites**

Following his divorce from his first wife in 2010, Applicant dated for a couple of years before deciding that dating did not work for him. (Tr. 20) Turning to dating sites to find women with reconcilable backgrounds and companionable interests, he made it clear initially that he was not looking to pay for sex. (Tr. 20) For him, the dating site he later chose in 2016 was good for him. (Tr. 20) He made his last contact with this dating site "sometime in 2021." (Tr. 21) To be fair, Applicant began accessing dating sites as far back as 2005, well before his 2010 divorce. (Tr. 28)

Between 2005 and 2017, Applicant accessed dating websites where he met numerous women, some of whom he engaged in sexual relations with and provided money or other items of value. (GEs 2-8; Tr. 23-25, 27-28) His various encounters with the women he met on dating websites are covered in his personal subject interview (PSI) of December 2018 and various investigation reports spanning 2014 through 2020. (GEs 2-8) Asked how many women he met over the four-year period he used the most recent website, Applicant estimated 10 to 14; some ("six or seven") he saw on more than one occasion. (Tr. 21-24) To use his most recent dating site cost him \$90 to \$100 a month. (Tr. 21-22)

When meeting women for the first time on his chosen dating website, typically he would ask them some initial questions about their interests before asking them out for face-to-face meetings. In these personal meetings (mostly in restaurants), he would ask them about their interests and needs. (Tr. 22) If they indicated any interest in straight-up prostitution he terminated the meetings. (Tr. 22) Money requested by women he met and established sexual relationships with (six to seven he estimated) varied in amounts and was honored by Applicant: sometimes before he had sexual relations with them and sometimes afterwards. (Tr. 26)

In February 2011, Applicant met a woman (a Russian citizen at the time) on a dating website. (GEs 2 and 4; Tr. 16, 29-31) After stopping at his house to bag groceries before proceeding to dinner, he escorted her upstairs where he engaged in sexual relations with her. (GEs 2-3) Throughout his brief relationship with this woman, she asked him repeatedly for help with her green card that was about to expire. (GE 2) Applicant consistently insisted that his sexual encounter with the woman was

consensual. (Tr. 30) After having one more conversation with this woman (six months later), he never saw or heard from her again. (Tr. 30-31)

Three years later (in 2014) the woman he met on a website with a visa issue filed a claim with the federal agency who employed her, claiming Applicant engaged in nonconsensual sex with her in his home after making contact with her on a dating website. (GEs 2-3) After conducting a thorough investigation of the reported incident, the agency dismissed charges for cited insufficient evidence. (GE 3; Tr. 30-31) Applicant continues to insist his sexual encounter with this woman was consensual, and there is no evidence in the record to corroborate either account.

Records document numerous encounters between Applicant and women he met through dating websites between September 2018 and December 2020. (GEs 2-8) In his exchanges with the women he met on these websites, he sometimes provided them money or other items of value in exchange for sexual relations. Applicant assured that he never made money or other items of value a condition of his having sexual relations with the women he met on the websites. (GE 2; Tr. 26)

In December 2019, a woman that Applicant met on an online dating site later filed a report with law enforcement authorities claiming he engaged in nonconsensual sex with her and verbally threatened her while showing her his gun magazines. (GE 5) Applicant insisted that his sexual encounter with this woman was consensual. (GE 2; Tr. 32). After engaging in brief sexual relations with the woman, Applicant asked her to spend the night with him, to which she declined. (GE 7) Before the woman departed, she asked Applicant for the \$500 he promised her when they met. When he declined, the woman called the police and accused him of rape. (GEs 5-7; Tr. 33-34)

When police later arrived at Applicant's apartment to investigate the woman's complaint, they asked him if he knew a certain woman, and whether that woman had been to his apartment. When he acknowledged one (identifying her by her first name) had been there, police handcuffed him and escorted him to jail. (GEs 5 and 7) Once in jail, police informed him that the woman who visited him in his apartment alleged he sexually assaulted and imprisoned her. Based on her complaints, the police formally arrested him and charged him with kidnapping and assault. (GEs 5 and 7; Tr. 35-36)

After spending six days in jail on the kidnapping and assault charges against him, Applicant posted bond and was released pending trial with a court date set in December 2020. (GEs 5 and 7) Court records document that the charges lodged against Applicant for kidnapping and assault were dismissed without prejudice. (GE 5; Tr. 36-37)

The final report of the filed charges against Applicant and court-entered disposition furnished to Applicant's employer in February 2020 detailed Applicant's personal account of the December 2019 incident. (GE 6) His account of the incident summarized the facts known to him and the dismissal of the charged in February 2020. (GE 5)

In November 2020, a woman who reportedly met Applicant on a dating website in November 2017, self-reported to police that Applicant had engaged in nonconsensual sex with her while she was incapacitated from too much alcohol consumption. (GE 5) In the police narrative of the incident, they wrote in their report that the complainant told police investigators that Applicant plied her with alcohol in his apartment before forcing himself upon her and engaging in nonconsensual sex. (GE 8) Asked about the incident at hearing, Applicant offered no recollection of the woman or the incident. (Tr 43) Investigation records confirm that investigation of the incident is ongoing with no estimations of when the investigation will be completed, or if any charges are expected. (GE 8)

When asked at hearing how he could distinguish prostitution from his use of dating sites to exchange money for sex, Applicant explained that he was always looking for establishing relationships in his exchanges with the women he met on dating sites, and was never seeking short-term sexual exchanges for money. (Tr. 45-46) Applicant's explanations are not fully consistent with his exhibited cited pattern of conduct in the cited cases. In these cited cases, Applicant manifested through his reported actions his prioritizing sexual gratification with the women he met on the dating websites without trying to become acquainted with them or understand and respect their personal histories and needs.

Based on the evidence developed from the materials in evidence (even in the absence of convictions or charges in some cases), Applicant's reported multiple actions over a lengthy period of time, when considered together as a pattern of conduct, create an evidenced-based profile of a person seeking sexual encounters with women previously unknown to him in exchange for money or other items of value. Whatever relationships Applicant claimed to be seeking from these women he met were never demonstrated to be more than short-term ones.

To be sure, there is irony in Applicant's historical reliance on the use of dating sites to meet women in the pursuit of meaningful relationships. Printouts from the dating website that Applicant accessed to meet women includes questions to complete to facilitate match-making arrangements between applicants with reconcilable interests and backgrounds. (GEs 9-10) Key words used to interest potential users of the site are "sugar daddy" and "sugar baby." (GE 9)

For those accessing the site in search of beneficial relationships, the dating site asks, *inter alia*, for photos and background information about the access users. (GE 9-10) While there is nothing in the dating site to accentuate the availability of short-term sexual encounters, the site did not foreclose site users like Applicant from accessing the site for the principal purpose of finding women who could satisfy his short-term sexual needs.

## **Policies**

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a

security clearance.” As Commander in Chief, “the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. Eligibility for access to classified information may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

### **Sexual Behavior**

*The Concern.* 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

### **Criminal Conduct**

*The Concern:* 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.

### **Burdens of Proof**

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it

is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

Security concerns are raised over Applicant’s multiple use of dating websites to meet women to establish personal relationships, foremost of which was sexual relations with the women he met online. Applicant’s use of these websites to formulate relationships with these unknown women that would knowingly include sexual encounters raises questions about Applicant’s judgment, reliability, and trustworthiness. Even without evidence of convictions, sexual behavior that potentially involves a criminal offense can subject the individual to undue influence of coercion, exploitation, or duress.

### **Sexual behavior concerns**

Applicant’s admissions of engaging in sexual encounters with women he met on dating websites, and the inability in some of the cases to credibly surmount allegations of sexual assault and other abuses, raise major security concerns about his judgment, reliability, and trustworthiness. On the strength of the evidence presented, four disqualifying conditions (DCs) of the AGs for sexual behavior apply to Applicant’s situation: DC ¶¶ 13(a), “sexual behavior of a criminal nature, whether or not the individual has been prosecuted”; 13(b) “pattern of compulsive, self-destructive, or high risk sexual behavior that the individual is unable to stop”; 13(c), “sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress”; and 13(d), “sexual behavior of a public nature or that reflects lack of discretion or judgment.”

To his credit, Applicant has committed to being careful in screening the women he has continued to access on the dating website he has used for over five years. He expressed no regrets or judgment mistakes when confronted by the complaining women who filed charges against him for sexual abuse and holding them against their will. In the most recent case filed against him in 2020, the initiated government investigation remains pending despite Applicant’s expressed lack of recollection of the underlying 2017 incident.

Factors to weigh and consider in determining whether an Applicant’s sexual engagement with women he has met on dating websites are whether the engagements are isolated and dated, and whether they involve random women that reflect high-risk sexual behavior on the applicant’s part that call into question an applicant’s judgment. See ISCR Case No. 16-03690 at 4 (App. Bd. Aug. 15, 2018) Even dated conduct, as is the case with several of Applicant’s complaining declarants, can be the source of an applicant’s current vulnerability to coercion or influence. See ISCR Case No. 03-25153 (App. Bd. March. 20, 2007); ISCR Case No. 02-26685 at 5 (App. Bd. Dec. 22, 2004);



ISCR Case No. 02-33091 (App. Bd. July 6, 2004); and ISCR Case No. 17-01680 at 4 (App. Bd. July 19, 2019)

Even though Applicant's dating site meetings and ensuing sexual encounters with women he met on dating websites were essentially private in nature, his encounters can rise to the level of vulnerability exposure to risks of coercion and duress to complaining participants (as here) who feel emboldened enough to report him to government agencies. This has happened with at least two of the women he met on dating sites and subsequently interacted with sexually. See ISCR Case No. 02-32254 at 2 (App. Bd. May 26, 2004) Even the dismissal of criminal charges (as is the case here with the set of charges tied to Applicant's 2011 sexual affair) does not preclude an unfavorable finding. See ISCR Case No. 17-00810 at 3-4 (App. Bd. Sep. 26, 2019)

More significant for security clearance purposes is the lengthy pattern of Applicant's cited abuses of women he met on legal dating sites and later engaged them in sexual encounters that resulted in criminal complaints being filed years later by two of the women Applicant met online. If assessed individually, each of the cited complaints might potentially be treated as isolated judgment lapses and mitigated. Applicant's lengthy pattern of cited sexual transgressions cannot be severed from his years of cited abuses of women he met on dating sites without engaging in a piecemeal analysis, long disfavored by the Appeal Board. See ISCR Case No. 19-02136 at 4 (App. Bd. March 8, 2021); ISCR Case No. 08-01075 at 6-7 (App. Bd. July 26, 2011) (favorable clearance decision reversed because the judge's "application of the mitigating condition and the whole-person factors did not consider the totality of Applicant's conduct and was erroneous.")

Considered together, separate events and incidents may have a significance that is missing when each event is viewed separately in isolation. See ISCR Case No. 19-02136 at 4 (App. Bd. March 8, 2021) Using these Appeal Board precedents, Applicant's cited individual sexual abuses and associated judgment lapses cannot be severed and assessed independently from one another.

### **Criminal conduct concerns**

Security concerns over Applicant's sexual behavior actions covering the course of many years are cross-alleged under Guideline J. Applicable DCs are (a), ¶¶ 31(a), "a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness" and 31(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." Trust in a person's ability to exercise good judgment, follow rules and regulations, and demonstrate reliability and trustworthiness are core criteria for determining whether a person is able to meet the minimum requirements for holding a security clearance.

In the face of cited multiple judgment lapses associated with Applicant's access to dating websites over an extended period of years, more time is needed to restore trust in Applicant's ability to avoid recurrent acts of high-risk sexual behavior in the foreseeable future. His noted military service, while worthy of considerable respect and appreciation, is not enough to counter his history of judgment lapses associated with his determined pattern of misuse of dating websites to meet and in some cases exceed the sexual expectations of the women he reportedly abused.

While this is not a close case, even close cases must be resolved in the favor of the national security. See *Dept. of Navy v. Egan, supra*. Quite apart from any sexual behavior and criminal conduct concerns the Government may have for the clearance holder employed by a defense contractor, the Government has the right to expect good judgment and trustworthy behavior for sustained periods of time from the trust relationship it has with the clearance holder. See *Snepp v. United States*, 444 U.S. 507, 511n.6 (1980) The lack of any charges and convictions in some of the cases involving Applicant, while noted and encouraging for Applicant, are not enough to facilitate safe predictions that he can avoid sexual transgressions with women he meets on dating sites in the foreseeable future.

### **Whole-person assessment**

From a whole-person perspective, Applicant has failed to establish enough independent probative evidence of his overall maturity, good judgment, reliability, and trustworthiness required of those who seek eligibility to hold a security clearance or sensitive position. While he presents with a lengthy and honorable military record, he lacks a sufficient track record of sustained avoidance of judgment lapses associated with his pattern of misuse of dating sites in a number of instances to facilitate safe predictions he is at no risk of recurrence. Considering the record as a whole at this time, including Applicant's recognized contributions to the nation's defense efforts and all of the facts and circumstances presented in this case, he does not mitigate security concerns with respect to the allegations covered by SOR ¶¶1.a-1.d of Guideline H and 2.a of Guideline J.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person, I conclude sexual behavior and criminal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

### **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:

GUIDELINE D (SEXUAL BEHAVIOR):	AGAINST APPLICANT
Subparagraph 1.a-1.d:	Against Applicant

GUIDELINE J (CRIMINAL CONDUCT):

AGAINST APPLICANT

Subparagraph 2.a:

Against 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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Roger C. Wesley  
Administrative Judge