



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-00982
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brittany C. M. White, Esq., Department Counsel  
For Applicant: *Pro se*

June 20, 2023

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 17, 2021. (Item 3.) On May 31, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines D, E, J and K. (Item 1.) The DOD 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 (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on June 3, 2022 (Item 2), and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on October 3, 2022. A complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 10. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government’s evidence. He received the FORM on October 7, 2022, and did not respond. Items 1 through 10 are admitted into evidence. The case was assigned to me on January 19, 2023.

## **Findings of Fact**

Applicant, age 30, is married and has no children. (Item 3 at pages 7, 28 and 30.) He served in the U.S. Navy for more than seven years from about January of 2012 until honorably discharged in September of 2019. (Item 3 at page 26.) Applicant has worked for a Federal contractor since January of 2021. (Item 3 at page 15.)

### **Guideline D - Sexual Behavior & Guideline J - Criminal Conduct**

1.a. and 3.a. Applicant admits that in about October and November of 2012, he engaged in criminal conduct by paying a Philippine prostitute for acts of sexual intercourse in the Philippines, while on active duty with the U.S. Navy.

1.b. and 3.a. Applicant admits that in about June of 2015, he engaged in criminal conduct by paying a Panamanian prostitute for acts of sexual intercourse in Panama, while on active duty with the U.S. Navy.

1.c. and 3.a. Applicant admits that in about March of 2017, he engaged in criminal conduct by paying a prostitute for acts of sexual intercourse in Alabama, while on temporary duty with the U.S. Navy.

1.d. and 3.a. Applicant admits that in about August of 2018, he engaged in criminal conduct by soliciting a prostitute for acts of sexual intercourse, while on temporary duty with the U.S. Navy.

1.e. Applicant admits that in about June or July of 2019, he engaged in indiscreet sexual conduct by using the sex toys of friends to masturbate, in their home and without their knowledge.

### **Guideline E - Personal Conduct & Guideline K - Handling Protected Information**

2.a. and 4.a. Applicant admits that in about January of 2018, he failed to timely report a security violation to the National Security Agency (NSA) Security, when he printed out and removed a classified SECRET document from a secure space and brought it to his residence.

2.b. and 4.b. Applicant admits that in about March of 2019, he failed to timely report a security violation to the National Security Agency (NSA) Security, when he brought an unauthorized thumb drive inside his secure workplace.

2.c. Applicant admits that, on June 4, 2019, he falsified material facts during his security processing interview, when he failed to report his sexual behavior, noted in Subparagraphs 1.a.~1.d., above. Applicant blames his misconduct on “undiagnosed ADD and Anxiety.”

2.d. Applicant admits that, on August 1, 2019, he falsified material facts during his security processing interview, when he failed to report his sexual behavior, noted in

Subparagraphs 1.d. and 1.e., above. Applicant again blames his misconduct on “undiagnosed ADD and Anxiety.”

### **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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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, “Any 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. Directive ¶ E3.1.15 states, “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 EO 10865, “Any 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## Analysis

### Guideline D - Sexual Behavior

The security concern relating to the guideline for Sexual Behavior is set out in AG ¶ 12:

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

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

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (b) a 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.

Applicant solicited prostitutes for sexual intercourse in the Philippines in 2012, in Panama in 2015, in Alabama in 2017, and at an unspecified location in 2018. His conduct is criminal and represents a pattern of high-risk sexual behavior that reflects a lack of discretion or judgment. It also creates a vulnerability to coercion or duress, as is apparent from his attempts to conceal it that are discussed below under Guideline E. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 14 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 14 including:

- (a) the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;
- (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.

None of the above mitigating conditions apply. Applicant is 30 years old. He has solicited prostitutes on multiple occasions from 2012~2018. There is no evidence that future instances of this nature are unlikely to occur. He has not attended any counseling. Sexual Behavior is found against Applicant.

### **Guideline E: Personal Conduct**

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during 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.

Based on Applicant's deliberate falsification of his SCAs, the following disqualifying condition applies:

AG ¶ 16 (b): deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an

employer, investigator, security official . . . or other official government representative.

AG ¶ 16 (d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination. . . . This includes, but is not limited to, consideration of: (3) a pattern of dishonesty or rule violation.

Applicant failed to disclose his security violations in a timely fashion, and continued his deceptions during security processing interviews in June and August of 2019.

The personal conduct security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors in AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(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.

None of these apply. Applicant did not make prompt or good-faith efforts to correct his concealments. He also has demonstrated a pattern dishonesty and rule violations. Applicant has not provided sufficient information in this record to demonstrate that he has met his burden of proof for his personal conduct. Personal Conduct is found against Applicant.

### **Guideline J - Criminal Conduct**

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

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 at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. Two conditions apply, as discussed below:

(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

(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.

Applicant solicited illegal prostitution from 2012~2018, in four locations, including at least two foreign countries, over a period of about six years. This evidence raises security concerns under these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 32 contains four conditions that could mitigate criminal conduct security concerns:

(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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; 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.

None of these apply. Applicant repeatedly failed to report his fairly recent, illegal sexual misconduct. The evidence does not establish mitigation under any of the above conditions. Criminal Conduct is found against Applicant.

### **Guideline K - Handling Protected Information (HPI)**

The security concern relating to the guideline for Handling Protected Information is set out in AG ¶ 33:

Deliberate or negligent failure to comply with rules and regulations for handling protected information-which includes classified and other sensitive government information, and proprietary information-raises doubt about an

individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

The guideline notes several conditions that could raise security concerns under AG ¶ 34. Four are potentially applicable in this case:

- (b) collecting or storing protected information in any unauthorized location;
- (c) loading, drafting, editing, modifying, storing, transmitting, or otherwise handling protected information, including images, on any unauthorized equipment or medium;
- (e) copying or modifying protected information in an unauthorized manner designed to conceal or remove classification or other document control markings; and
- (g) any failure to comply with rules for the protection of classified or sensitive information.

In 2018, Applicant improperly brought home classified documents. In his Answer he admits "to burn the page that was marked 'Secret.'" In 2019, Applicant brought an unauthorized thumb drive inside his secure workplace.

AG ¶ 35 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 35 including:

- (a) so much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities;
- (c) the security violations were due to improper or inadequate training or unclear instructions; and
- (d) the violation was inadvertent, it was promptly reported, there is no evidence of compromise, and it does not suggest a pattern.

None of these apply. Applicant's conduct was proactive, and he tried to cover up his misconduct by partially destroying a protected document. Handling protected Information (HPI) is found against Applicant.



## **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guidelines D, E, J and K in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines D, E, J and K, and evaluating all the evidence in the context of the whole person, I conclude that Applicant failed to mitigate the security concerns raised by his repeated sexual behavior, personal and criminal misconduct, and mishandling of protected information. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

## **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1 Guideline D (Sexual Behavior): **AGAINST APPLICANT**

Subparagraphs 1.a – 1.e:                      **Against Applicant**

Paragraph 2 Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraphs 2.a – 2.d:                      **Against Applicant**

Paragraph 3 Guideline J (Criminal Conduct): **AGAINST APPLICANT**

Subparagraph 3.a:                              **Against Applicant**

Paragraph 4 Guideline K (HPI):              **AGAINST APPLICANT**

Subparagraphs 4.a. and 4.b:                  **Against Applicant**

## **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant or continue Applicant's national security eligibility for access to classified information. Clearance is denied.

Richard A. Cefola  
Administrative Judge