



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



In the matter of:)
)
) ISCR Case No. 22-02306
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

09/11/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns under Guidelines B (foreign influence) and D (sexual behavior), but he did not mitigate the security concerns under Guidelines E (personal conduct) and J (criminal conduct). Eligibility for access to classified information is denied.

Statement of the Case

On December 19, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B, D, E, and J. Applicant responded to the SOR on January 23, 2023, and requested a hearing before an administrative judge. The case was assigned to me on July 11, 2023. The hearing was convened as scheduled on August 14, 2023.

Evidentiary Rulings

Evidence

Government Exhibits (GE) 1 through 4 were admitted in evidence over Applicant's objection. Applicant testified, but he did not submit any documentary evidence.

Department Counsel requested that I take administrative notice of certain facts about Turkey. (Hearing Exhibit (HE) 1) Without objection, I have taken administrative notice of the facts contained in the request. The pertinent facts are summarized in the written request and will not be repeated verbatim in this decision. Of note, Turkey is a constitutional republic with an executive presidential system and a unicameral parliament. It is a key North Atlantic Treaty Organization (NATO) ally and a critical regional partner. There is a significant threat of terrorism and ongoing human rights problems in Turkey.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer or a predecessor company since 2018. He served on active duty in the U.S. military from 1994 until he retired with an honorable discharge in 2014. He seeks to retain a security clearance, which he has held since he served in the military. He earned an associate degree in 2010, and he has additional college credits. He is married with one child. (Transcript (Tr.) at 21-27; Applicant's response to SOR; GE 1)

Applicant is a native-born U.S. citizen. He met his wife in about 2006 while he was stationed in Turkey. They married in Turkey in 2007. His wife is a citizen of Turkey, and his child is a U.S. citizen. His child has not been registered as a citizen of Turkey, but he has an identification card from Turkey. (Tr. at 29-30; Applicant's response to SOR; GE 1, 2)

Applicant's wife and child moved to the United States in about 2014 when Applicant worked in the United States. She was granted permanent resident status (green card). She moved to Turkey with their child in 2015 when Applicant took a position overseas. She and their child have lived in Turkey since about 2015. Her green card will expire in about November 2023. Because she has not resided in the United States since 2015, an immigration attorney advised him to let the green card expire and apply for another one when he returns to live in the United States. (Tr. at 22-23, 28-34; Applicant's response to SOR; GE 1, 2)

Applicant's parents-in-law are citizens and residents of Turkey. Applicant believes his father-in-law performed mandatory military service. He was a civil engineer, but he is now retired. His mother-in-law has never worked outside the home. (Tr. at 39-42; Applicant's response to SOR; GE 1, 2)

Applicant visits his family in Turkey about once a year for about ten days to two weeks. He contacts them by telephone or electronic means almost every day. They own an apartment in Turkey. He sends them about \$2,500 a month in support. (Tr. at 36-38; GE 1, 2)

Applicant was stationed in Germany from 2011 to 2013. On numerous occasions, he entered the women's locker room at a gym on a NATO base, went into the gym bags or lockers of about 27 women, and stole their underwear. He was caught when a woman placed a hidden camera in her gym bag. (Tr. at 24, 53-57; Applicant's response to SOR; GE 3)

Applicant was punished under Article 15 of the Uniform Code of Military Justice (UCMJ) in May 2013 for larceny of four pairs of underwear from a German female, one pair of underwear from another German female, two pairs of underwear from a British female, and two pairs of underwear from a Dutch female. He was reduced a pay grade to E-6, ordered to forfeit \$1,000 per month for two months, and reprimanded. (Tr. at 23, 55; Applicant's response to SOR; GE 3, 4)

Applicant stated that he did not know why he took the underwear, but it was not for his sexual gratification. He has never received counseling to delve into the roots of why he did so. He is ashamed of the conduct, and he has never informed his wife, his family, or his friends about it. He stated that he has not stolen underwear since he was caught. (Tr. at 55-57)

Applicant worked for a company from 2014 to 2018. He resigned in lieu of termination after he was caught cheating on a certification examination when he brought notes into the test center. He stated that he forgot the expiration date of the certification, and he did not have time to prepare for the test. He admitted that it was a poor decision, but it was the only occasion he had ever cheated. (Tr. at 27, 50-53, 66; Applicant's response to SOR; GE 1, 2)

From about 2014 through January 2020, while Applicant was traveling on leave from his job, he engaged in extramarital sexual relations with multiple foreign women in Bulgaria, Hungary, the Czech Republic, and Thailand. The women were not prostitutes, and there was no money exchanged. It was consensual activities with adult women that he met "[a]t a bar or on the street or restaurant or museum, wherever." He did not have any ongoing contact with the women after the sex. He informed his wife about the sex with the foreign women about one to two years ago. She was not happy, but she forgave him. (Tr. at 42-50, 66; Applicant's response to SOR; GE 1, 2)

Applicant admitted that he made poor decisions, but he stated that he learned from his mistakes, and none of the conduct will be repeated. He asserted that his behavior has never affected his ability to protect classified information, and that he will never allow his conduct to be used to extort or coerce him into divulging classified information. (Tr. at 16, 66-67; Applicant's response to SOR; GE 2)

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 B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable 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; and

(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.

Applicant's wife and her parents are citizens and residents of Turkey. His child is a U.S. citizen living in Turkey with Applicant's wife. Turkey is a constitutional republic and a key NATO ally, but there is a significant threat of terrorism and ongoing human rights problems in Turkey.

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater

if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant's family in Turkey creates a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Applicant's extramarital sexual relationships with multiple foreign women in Bulgaria, Hungary, the Czech Republic, and Thailand created a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶ 7(a) is applicable to those relationships.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(a) the nature of the relationships 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; and

(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.

Applicant has not had any ongoing contact with the foreign women after the sexual encounters. He informed his wife about the sex with the foreign women about one to two years ago. She was not happy, but she forgave him. There are no current foreign influence concerns generated by those contacts.

I considered the totality of Applicant's ties to Turkey. There is nothing in the administrative notice documents to indicate that Turkey would use coercive measures against Applicant's family to obtain classified information. There is terrorism in Turkey, as there is in multiple countries, including the United States.

Applicant served in the U.S. military for 20 years. I find that his ties to Turkey are outweighed by his deep and long-standing relationships and loyalties in the United States. It is unlikely he will be placed in a position of having to choose between the interests of the United States and the interests of Turkey. There is no conflict of interest, because he can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

Guideline D, Sexual Behavior

The security concern 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.

AG ¶ 13 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and
- (d) sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

The SOR cross-alleges Applicant's extramarital sexual relationships with multiple foreign women in Bulgaria, Hungary, the Czech Republic, and Thailand. That conduct reflected a lack of judgment and made him vulnerable to coercion, exploitation, and duress. AG ¶¶ 13(c) and 13(d) are applicable.

Conditions that could mitigate sexual behavior security concerns are provided under AG ¶ 14. The following are potentially applicable:

- (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's wife is aware of his affairs. She was not happy, but she forgave him. Sexual behavior security concerns are mitigated.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant'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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(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 entered the women's locker room at the gym on a NATO base, went into their gym bags or lockers, and stole the underwear from about 27 women. AG ¶ 31(b) is applicable.

Conditions that could mitigate criminal conduct security concerns are provided 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.

It has been more than ten years since Applicant stole the women's underwear. He stated that he did not know why he took the underwear, but it was not for his sexual gratification. That statement is difficult to accept at face value, because why else would a man subject himself to so many legal and other repercussions to steal women's underwear. He has never received counseling to delve into the roots of why he did so. He is ashamed of the conduct, and he has never informed his wife, his family, or his friends about it.

Because of Applicant's lack of insight into his conduct, I am unable to conclude that it is unlikely to recur. His criminal conduct continues to make him vulnerable to exploitation, manipulation, and duress; and it casts doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions are applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, trustworthiness, unreliability, lack of candor, willingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information; and

(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.

The SOR alleges Applicant's resignation in lieu of termination after he was caught cheating on a certification examination. It cross-alleges his theft of women's underwear and his extramarital sexual relationships with multiple foreign women. His conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. The conduct also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable to the theft of underwear and the extramarital affairs. AG ¶¶ 16(d) and 16(e) are applicable to the cheating on a certification examination.

AG ¶ 17 provides conditions that could mitigate security concerns. 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;

(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.

The discussion above under Guidelines B, D, and J is incorporated here. Applicant was involved in multiple incidents of poor judgment and criminal conduct. I am unable to conclude that it is unlikely to recur. His conduct continues to cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 17(c) and 17(d) are not applicable. AG ¶ 17(e) is applicable to the extramarital affairs. It is not applicable to the other conduct. Personal conduct security concerns are not mitigated despite the presence of some mitigation.

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 have incorporated my comments under Guidelines B, D, E, and J in my whole-person analysis. I also considered Applicant's military service and his work for defense contractors.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant

mitigated the security concerns under Guidelines B and D, but he did not mitigate security concerns under Guidelines E and J.

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 B:	For Applicant
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraphs 2.a-2.b:	Against Applicant
Paragraph 3, Guideline J:	Against Applicant
Subparagraph 3.a:	Against Applicant
Paragraph 4, Guideline D:	For Applicant
Subparagraph 4.a:	For Applicant

Conclusion

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge