DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 22-00371
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro Se*

01/31/2024

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Decision

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MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On October 28, 2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (2020 EQIP) to upgrade his security clearance. On June 6, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS), formerly named the Department of Defense Consolidated Adjudications Facility, sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guidelines E and F. The DCSA CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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.

On a date not indicated in the record, Applicant responded to the SOR (Answer) requesting a decision based on the written record in lieu of a hearing. On a date not indicated in the record, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM). On August 25, 2022, Applicant responded to the FORM and requested a hearing before an administrative judge (GE 8). The Government was ready to proceed on September 13, 2022. The case was assigned to me on April 28, 2023. On June 14, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that his hearing was scheduled for July 7, 2023. I convened the hearing as scheduled via video conference.

At the hearing, Applicant testified, and I admitted into evidence Government Exhibits (GE) 1 through 9, without objection. I appended a transmittal letter and the Government's exhibit list to the record as Hearing Exhibits (HE) I and II, respectively. At Applicant's request, I left the record open until August 4, 2023, to allow him the opportunity to submit evidentiary documents. He timely provided documents that I admitted into evidence collectively as Applicant's Exhibits (AE) A through E, without objection. DOHA received the transcript (Tr.) on July 18, 2023.

Findings of Fact

Applicant, age 36, married his current wife in January 2022. He was married to his first wife from 2013 through 2017. They separated when she was about four months pregnant with their now eight-year-old child, and remained separated for about two years before their divorce was finalized in January 2017. He earned a bachelor's degree in 2017, and a master's degree in 2019, both in information technology. He served on active duty in the U.S. Air Force from 2006 through May 2017, when he was honorably discharged and transitioned to the inactive reserves. Since June 2017, he has been steadily employed by various defense contractors as a system administrator, except for one period of unemployment from March through September 2020. He began working for his current sponsor since about December 2021 or January 2022. He has maintained a DOD security clearance since 2006, during which time he completed three EQIPs, including his most recent 2020 EQIP. (GE 1; GE 3 at 11; AE E; Tr. at 7, 33, 76-77, 79, 84, 94)

While on active duty, Applicant was stationed overseas twice: Country A from August 2007 to August 2009; and Country B from August 2009 to August 2012. As a defense contractor, he has worked primarily overseas: Country C from August 2018 through June 2019; and Country A from July 2019 through present, except for the period from July to September 2020, when he temporarily resided in Country D with Friend X. The SOR does not raise foreign preference or foreign influence concerns. (GE 1; GE 3 at 10, 13; Tr. at 147)

Under Guideline E, the SOR alleged that Applicant: (1) intentionally falsified his 2020 EQIP by failing to disclose relevant facts about his disciplinary record in the military and involvement with foreign nationals (SOR ¶¶ 1.a – 1.c), and (2) solicited a prostitute while traveling overseas in about late 2019 or 2020 (SOR ¶ 1.d). Under Guideline F, the SOR alleged three delinquent debts totaling $25,508. (SOR ¶¶ 2.a – 2.c). In his Answer,

he stated "I admit" to each of the Guideline F and E allegations, with explanations. However, I construed his responses to SOR ¶¶ 1.a through 1.c as denials because he denied any intent to falsify in the accompanying explanations. (Tr. at 9-10)

SOR ¶ 1.a

On his 2020 EQIP, Applicant answered "no" to two questions asking about his disciplinary record in the military. He did not otherwise disclose that he was subject to nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) in January 2017 (Article 15), for misconduct involving missing equipment. (GE 1)

During his March 2021 security clearance interview (2021 SI), Applicant initially affirmed that he had not been subject to court marital or other disciplinary procedure under the UCMJ. After confrontation, he acknowledged the Article 15. He claimed that he did not disclose the Article 15 on his 2020 EQIP because he thought it fell outside of the reportable seven-year period. He denied any wrongdoing with respect to the misconduct for which he received the Article 15. He claimed that he was made to take the blame for the missing equipment even though it was already missing when he took over the position of inventory custodian. He maintained that he agreed to accept punishment because he was in the process of leaving the military at the time. He stated that he elected the Article 15 for the benefit of an early separation, after being offered two punishment options: (1) a letter of reprimand (LOR) and an honorable discharge in one year; or (2) the Article 15 and an honorable discharge in four months. In his Answer, he stated that he was "the [unit's] scape goat" and "was not educated enough with military UCMJ policy to avoid [punishment]." (GE 3 at 11-12)

At the hearing, Applicant maintained that he initially tried "to fight" the punishment, but then agreed to accept it because he was "ready to get out of the military" after learning that he could earn more money as a defense contractor. He stated that he was told that accepting punishment would afford him the opportunity for an early separation with an honorable discharge. He explained that he had reenlisted for another five years in 2016. He was neither asked, nor did he address, why he reported on his 2020 EQIP "enlistment ended" as his reason for leaving active duty. (Answer; GE 1; Tr. at 36, 40-42, 113, 145)

Beginning with his Answer and continuing through the hearing, Applicant denied that he intentionally omitted the Article 15 from his 2020 EQIP and during his 2021 SI. He addressed his 2021 SI omission as follows,

> It took me a second to remember the incident . . . I was not hiding the Article 15, I simply forgot about it since it had been over 4 years since I left active duty. (Answer)
>
> I simply forgot about the Article 15 . . . Once I fully separated from the military, everything about the military life I had I did not sit around and think about it all the time . . . My concern was never to remember how I exited the military. That's why when the investigator asked me about it, I remembered

it, but initially I didn't . . . The last thing on my mind was an Article 15. (FORM response)

I was talking to the [DOD investigator], she asked me if I had judicial punishment, and I was like I don't think I've had judicial punishment before. And then she said you had an Article 15, and I was like yes, I had an Article 15. And she said well, that's judicial punishment, and I was like oh okay. I wasn't trying to hide the fact that I had an Article 15, I honestly just forgot in the moment. (Answer; GE 8; Tr. at 22)

Applicant initially testified about his 2020 EQIP omission as follows,

When I was going through my [2020 EQIP], and I was just writing answers, and answering everything, it asked me about it, and I said no simply because I didn't remember. I got out [of] the military, I don't know, seven, eight years ago. When I saw the question I just marked no, because I was like no, I didn't get any action from the UCMJ. I didn't think about it at the moment. I wasn't saying no because I didn't have it if that makes sense. I was just saying no because I honestly didn't remember. I don't have any other explanation for that, I just didn't remember in the moment. (Tr. at 22-23)

Upon cross examination, Applicant reiterated that he answered "no" to the questions on his 2020 EQIP that asked about his disciplinary record because he "just honestly didn't remember." He then stated that, when he agreed to accept punishment for the missing equipment, he believed that he would only be receiving LORs. He claimed that he did not know about the Article 15 until some months after he separated from the military. Then, he had the following exchange with Department Counsel:

DEPARTMENT COUNSEL: So, once again then, why didn't you disclose that Article 15 in the [2020 EQIP]?

APPLICANT: When I [completed the 2020 EQIP] I simply just forgot. I said that before, I wasn't thinking about it. It's not -- I literally just was not thinking that it was judicial punishment, or the Article 15. I didn't remember that I got it, it was some years ago, I don't have another answer. I honestly just didn't remember at the time.

DEPARTMENT COUNSEL: Okay, but you knew that you had received some form of discipline while you were in the military, correct?

APPLICANT: Yeah, LOR, yeah.

DEPARTMENT COUNSEL: So, why didn't you disclose that?

APPLICANT: The LOR?

DEPARTMENT COUNSEL: Yeah.

APPLICANT: I mean that's not punishment though, that's like a slap on the wrist, like hey we're documenting this, don't do it again. I don't think that's like discipline, at least from what I know. (Tr. at 35-43)

SOR ¶ 1.b

On his 2020 EQIP, Applicant reported his ex-wife as a Country B national. He answered "no" in response to a question asking him about "close and/or continuing contact with a foreign national," and did not otherwise disclose his close and continuing contact with two other foreign nationals. (GE 1; Tr. at 49-50, 118)

During his 2021 SI, Applicant volunteered that had close and continuing contact with a Country E national with whom he was currently in a relationship, and a Country F national with whom was previously in a relationship. He claimed that he did list them on the 2020 EQIP because he misunderstood the question. He stated that only Friend X knew about either relationship. He maintained that he was not required to report foreign contacts to his employer. About the Country E national, he stated: (1) she resided in Country A and worked as a stripper at a local strip club; (2) he first met her in early 2020 through a friend who worked with her at the club; and (3) he maintained daily contact with her, both in person and by telephone. About the Country F national, he stated: (1) during their relationship, she resided in Country C and worked as a cook at a hotel; (2) he first met her in 2018 via an online dating application; (3) they dated for eight months; (4) they last had contact one or two years ago; and (5) he did not expect to have future contact with her. (GE 3 at 13)

In his May 10, 2022 response to interrogatories, Applicant reported that he married the Country E national (his current wife) in January 2022, and first met her in January 2020. He reported his first and last dates of contact with the Country F national as March 2018, and March 2019, respectively. (HE II; GE 3 at 2, 4)

Beginning with his Answer and continuing through the hearing, Applicant denied that he intentionally omitted his current wife and the Country F national from his 2020 EQIP. In his Answer, he stated,

> Initially on the [2020 EQIP] I answered the question the way I did, because I didn't think that non-cohabited, small relationships overseas would apply to that question. Being overseas, I was dating primarily foreign [women], but it was just dating and nothing serious until I came to [Country A] and found [my current wife]. But again, I was not hiding this information and will gladly admit to dating while overseas. Even though I am now married to the [Colombian national] I was dating.

In his FORM response, Applicant stated,

> When I was dating my current wife back in 2020 she was 20 years old . . . dating a 20 year [old] is not easy for me at my age . . . At the time of the [2020 EQIP] Yes I had [known my current wife] for a year. However, I was not supporting her for the entire time. So when the [2020 EQIP] asked me if I considered her as a foreign contact, my answer [was] no. At that time she was just a young pretty girl I was interested in. We were not in a full relationship for a year. I only said a year as a guess, because I didn't want the investigator to try to make it seem like it was [a] different situation.

At the hearing, Applicant proffered the following reasons to explain why, at the time he completed his 2020 EQIP, he did not consider either his current wife or the Country F national to be reportable foreign contacts: (1) when he read the 2020 EQIP question, he did not understand how the government defined "close and/or continuing contact with a foreign national" and had not read the words "bound by affection;" (Tr. at 53-57); (2) at the time he completed the 2020 EQIP, he was not in a "solid relationship" with his current wife and was not living with her (Tr. at 55, 56); and (3) he was "just dating" the Country F national and was never in a relationship with her. (Tr. at 61, 118) He also stated,

> Again, at the time, to be honest, I did not know what a foreign contact was. I thought it was like -- I'm not going to say I didn't know what it was, I know what a foreign contact is, but I didn't think it was just like girls that you had relations with. (Tr. at 23)

> I didn't know it was like hey, if you touched this girl, or if you had a conversation with this girl, or something like that. I don't know where the line of foreign contact is with a female. I mean if you meet one night, you do something, and then you don't talk to her again, I don't even know how that goes. (Tr. at 23)

> And as far as my current wife, I was just dating her. . . We would go weeks and weeks -- not weeks, we would go days, or a week maybe without talking to each other. . . it was not like we are together and she was my girlfriend. It was nothing like that for a while, for a very long time. . . So, again, like I didn't know at that time, just on and off dating meant foreign contact. I honestly just didn't know that's what it meant. I apologize, but I didn't know. (Tr. at 23-24)

> So, when I filled this out . . . I not like in a solid relationship with [my current wife]. I was still trying to get her to be in a relationship with me. I mean, I'm not going to say that, I was pursuing her, I guess, and we were dating." (Tr. at 56)

> I didn't know much about being with a girl from a third world country. The only other foreign person that I had dated before was [the Kenyan national], but she wasn't -- I wasn't dating, that was just me kind of having relations,

and then it wasn't -- I wasn't in relationships like that. It was -- I don't know how to say it professionally, if you understand what I'm trying to say, it's not a professional way to say it. (Tr. at 56-57)

Upon cross examination, Applicant acknowledged that he had undergone security training about foreign contacts. However, he claimed his training did not indicate to him that either his current wife or the Country F national were reportable close and continuing contacts on his 2020 EQIP. He maintained that he did not realize that they were reportable until the point in the hearing when he re-read the 2020 EQIP and then understood the meaning of "bound by affection." By the end of the hearing, he professed an understanding of his security obligations with respect to reporting contact with foreign nationals. (Tr. at 54-55, 61, 119-120, 129-130, 137-138)

At various times throughout the hearing, Applicant testified about the timeline of his relationship with his current wife to underscore that it was not serious at the time he completed the 2020 EQIP. He attributed any inconsistencies in his testimony about the timeline to his faulty memory. He could not remember whether he met her in January 2019 or January 2020. He stated that, following an argument in "mid-2020" or "June 2020," they "stopped talking" for a period that he recalled lasted about "six months, seven months" or "maybe seven, eight months, six, seven, eight months, one of those, I don't know which one it was exactly." He later clarified that they were still talking, but just "didn't see each other for a really long time." Then, he had the following exchange with Department Counsel:

DEPARTMENT COUNSEL: What did you get into [an argument] about?

APPLICANT: Me leaving . . . And I told her I was going to leave -- no, she said she don't want me to leave, and that was what the argument was about.

DEPARTMENT COUNSEL: She didn't want you to leave, and that's what the argument was about?

APPLICANT: Yeah. . .

DEPARTMENT COUNSEL: . . . is it fair to say that she was upset about your leaving because you guys were in a serious relationship?

APPLICANT: We wasn't serious. To be honest with you, I don't know why she was upset . . . She probably knew that once I left she would never come back to [Country A] . . . So, that's probably what it was. She probably didn't want to leave [Country A] . . .

DEPARTMENT COUNSEL: Wait, why would your leaving [Country A] mean she was leaving [Country A], was she going to go with you?

APPLICANT: I wanted her to go with me, I told her I wanted her to go with me, yeah.

DEPARTMENT COUNSEL: Okay, so that was mid-2020 that you wanted her to go with you, wherever you were going to end up?

APPLICANT: Yeah. (Tr. at 48-50, 52, 60, 154)

Applicant struggled to explain why he chose to report his current wife and the Country F national as foreign contacts during his 2021 SI in light of his position that he did not then consider them as such. He stated,

> . . . after the fact, then I probably was like, okay, well, maybe I should just tell them . . . Maybe I did not say all the truth [in the 2020 EQIP] but I did say the truth after. And I want to stress that I wasn't trying to hide anything . . . I figured at some point I probably want to . . . get this [top secret clearance], which I was applying for, which I know that it's strict, right, eventually at some point I was like, I was thinking I want to get a poly as well, and you have to tell the truth, so it's better to just tell the truth and just, you know, even if you don't remember it's better to say it and not hide it then to hide it and don't say anything, you know, because then you look worse. I would have looked worse if you guys would have been asking me now and then I would have just been like, oh, by the way. Because then that looks crazy.
>
> . . . I'm just saying, like at the time of the [2020 EQIP] I wasn't even, I wasn't even like thinking. Like I wasn't even thinking about it. I was just, you know, I was just going through the [2020 EQIP] and just like, you know, most of this stuff really doesn't apply to me. I was assuming most of this stuff really doesn't apply to me. You know, put what you know right now to the best of your knowledge. Put what you know. And that's what I did. I put what I knew at the time to the best of my knowledge and then after I was like, well, maybe they need to know. I don't know . . . I was just trying to be truthful about it.
>
> . . . Well obviously [my current wife], when I was dating her . . . She's [a Country E national] so I was like, they want to know about her, so I should tell about her. To say about her, she is [a Country E national] and I'm married to her so I should say. (Tr. at 123-126)

SOR ¶ 1.c

On his 2020 EQIP, Applicant answered "no" in response to a question asking about "financial support for any foreign national," and did not otherwise disclose that he provided financial support to a foreign national. (GE 1)

During his 2021 SI, Applicant volunteered that he provided financial support to his then girlfriend (now current wife)'s mother, who was a citizen and resident of Country E (Colombia). He proffered the following facts about the financial support: (1) he sent money to her mother at his then girlfriend's request; (2) his then girlfriend told him that her mother needed the money to pay rent because her mother was struggling financially after losing

her job due to COVID; (3) in the last year, he sent approximately $300 via Western Union to her mother in Country E four times; (4) he never met or had any contact with her mother; (5) he only sent her mother money because he was dating her daughter; (6) he has never provided financial support to any other foreign national; and (7) he did not list this financial support on his 2020 EQIP because he did not think about it. (GE 3 at 14)

In his May 10, 2022 response to interrogatories, Applicant estimated that he sent a total of $2,000 to his then girlfriend's mother, including the $300 he last sent her in August 2021. He denied that he provided "financial support" to his current wife before they married but admitted that, since they married, he has supported her "normally as my wife." (HE II; GE 3 at 6)

In his Answer, Applicant stated "I admit" to the facts alleged in SOR ¶ 1.c, including that he sent $300 per quarter to his current wife's mother beginning on or around March 2020. In the explanation accompanying his admission, he denied that he sent any money directly to her mother. Then, he admitted that he gave money to his current wife, initially without knowing that she was sending the money he gave her to her mother. He stated that he did not report the money he gave to his current wife on his 2020 EQIP because he did not consider it to be financial support. He also stated,

> Since my last divorce the lawyers and judges made me aware of what financial support is, and to me giving money to the woman I was dating at the time was not financial support, since we were not living together and not in a relationship. The only reason I knew the money [I gave her] went to her mom was because on the phone on a random day I hear her say to her mom that yes she would send her some money, and that's when I asked "is the money I give [you] going to your mom[?"] and she answered yes.

At the hearing, Applicant addressed his 2020 EQIP omission by stating,

> So, again, when I was dating [my current wife], randomly once or a couple times she would ask me to send her mom some money. I said okay, cool. I had no idea this is a type of support. She wasn't even my girlfriend, I was just -- she was a girl, we were dating or whatever, I just gave her some money. For me it was innocent, it wasn't like I'm paying her mom's rent every month, it was not like that . . . I don't know how to explain it, it was just random. (Tr. at 24-25)

At the hearing, Applicant stated that he gave money to his current wife before they were married to help her pay for groceries, while she was unemployed due to COVID, since they were not then living together. He maintained that he did not intend for her to give the money he gave her to her mother. He could not recall how much money he gave his current wife but estimated that it was no more than "maybe 80 euros" at a time, and "a couple hundred bucks" in total. He could not recall details about the timeline but acknowledged that he continued to give her money after he found out that she was giving it to her mother. He stated that, before he found out, he had given her money only once

or twice before, and then, after he found out, he continued to give her money for "maybe a couple more months, probably three or four months." (Tr. at 46-47)

Regarding the $300 amount that he reported in his May 10, 2022 response to interrogatories and referenced his Answer, Applicant stated,

> . . . that was an estimate. I estimated that I may have given that to her. It wasn't an exact amount. I don't remember the exact amount of money I gave her years ago. It was just an estimate. (GE 3 at 6; Tr. at 47-48)

SOR ¶ 1.d

In his May 10, 2022 and May 16, 2022 responses to interrogatories, Applicant admitted that he "paid for sex" in "1-2020/6-2020 1 time," while he was in Country G. In his Answer, he admitted that he "solicited a prostitute while traveling overseas in or around late 2019 or 2020." He explained, "[t]his happened while I was out with some friends just having fun. I was unaware that I am not allowed to legally pay a prostitute, even in a country where it is legal." (GE 4 at 2)

In his FORM response, Applicant referenced his solicitation as hiring an escort. He maintained that he believed that he did not violate any rules by hiring an escort because he was overseas where it was legal. He acknowledged that he knew that hiring an escort would have been illegal while he was in the military, but believed that, as a contractor, "the rule didn't apply to me as I no longer fell under the UCMJ and I was just a normal civilian." He also stated,

> I have [not] been trained or told by anything or anyone that I am not allowed as a contractor to hire an escort. If that is wrong, then I apologize because I simply didn't know . . . In my time overseas, I have seen and talked [to] hundreds of contractors who do it on a daily basis and I thought it was ok overseas, since overseas the rules are different. Of course I have never done anything like this in America. Again I apologize for this but [I] simply was unaware." (GE 8 at 1)

At the hearing, Applicant maintained that he solicited a prostitute only one time. He acknowledged that he knew prostitution was illegal in the United States. However, based upon the advice of his coworkers and his own Google search, he concluded that his solicitation was permissible. He explained that he trusted his coworkers because they were older and possessed higher security clearances than him. He claimed that he did not intend to solicit a prostitute when he agreed to attend a party with his coworkers and attributed his decision to peer pressure. At no time during his testimony did he reference his solicitation as hiring an escort. (Tr. at 25-26, 135)

Upon cross-examination, Applicant admitted that he had undergone human-trafficking training prior to soliciting a prostitute. However, he believed that prostitution was not considered human trafficking if it was legal. Later, he testified that he now understands that prostitution is considered human trafficking; and that "[f]rom what I

guess I'm learning now is that prostitution is illegal period. No matter if it's legal in that country or not." When asked to confirm the country in which his solicitation occurred, he identified Country G, but he expressed doubt about the accuracy of his recollection. (Tr. at 62-63, 134-135)

Foreign Travel

On his 2020 EQIP, Applicant reported that he traveled on "many short trips" within Country A from July 2019 through present. During his 2021 SI, he volunteered that he also travelled to: (1) Country E for tourism, for seven days in June 2019, and for ten days in March 2020; (2) Country G for tourism, for two days in December 2019; and (3) Country D to visit and live with Friend X, for two months from July 2020 to September 2020. He specified that his travel to Country E occurred before he met his current wife. He claimed that he did not list his foreign travel to Countries D, E and G on his 2020 EQIP because he misunderstood the question and thought he was not supposed to list vacations. (GE 1; GE 3 at 13-14)

At the hearing, Applicant admitted that his March 2020 travel to Country E occurred after he met his current wife, but he maintained that he has never traveled with her to Country E. When asked why he told the investigator during his 2021 SI that his March 2020 travel to Country E occurred before he met his current wife, he attributed his faulty memory. (Tr. at 50-51, 59-61)

SOR ¶¶ 2.a through 2.c

The alleged debts involve: (1) a $18,500 personal loan opened in Applicant's individual name in July 2015, and transferred for collection in June 2016 (SOR ¶ 2.a); (2) a $4,032 unsecured loan account opened in his individual name in June 2015, and transferred for collection in about July or November 2019 (SOR ¶ 2.b); and (3) a $502 cell phone account that was transferred for collection in April 2021 (SOR ¶ 2.c). The debts alleged in SOR ¶¶ 2.a and 2.b are confirmed by Applicant's December 2020 and January 2022 CBRs; and SOR ¶ 2.c by his January 2022 CBR. His December 2020 and January 2022 CBRs reflect that he disputed the account information reported about the debts alleged in SOR ¶¶ 2.a and 2.b. (GE 6 at 3, 4; Item 7 at 3; GE 8 at 2; GE 9)

On his 2020 EQIP, Applicant disclosed the debt alleged in SOR ¶ 2.c. He stated that that he could not afford to pay the debt due to his unemployment in 2020. He planned to pay the debt in full once he started receiving paychecks from his new employment. (GE 1)

During his 2021 SI, Applicant discussed all three debts, albeit SOR ¶ 2.b after confrontation. Regarding SOR ¶ 2.a, which he described as a loan account he believed his ex-wife opened without his knowledge or consent, he stated that he: (1) was unaware of the loan until its delinquent status was brought to his attention in 2016, when he was in the process of purchasing a car; (2) did not receive any bills or phone calls about the debt; (3) once sought the assistance of a credit-repair company regarding this debt, to no avail; (4) did not list the debt on his 2020 EQIP because it does not belong to him and he

does not know any details about it; and (5) planned to dispute the debt with the credit bureau agencies. Regarding SOR ¶ 2.b, which he described as a loan account he opened to pay for a separate apartment and other divorce-related expenses in 2017, he stated: (1) the loan became delinquent due to his failure to make timely payments; (2) he eventually paid the loan in full; and (3) did not list the debt on his 2020 EQIP because he did not know it had been sent to collections. Regarding SOR ¶ 2.c, he stated: (1) he believed that he may have paid the debt since it no longer appeared on his CBR; and (2) on an unspecified date, he sent a query about the debt through the cell phone provider's mobile application and received a response that no account under his name could be found. (GE 3 at 14, 15)

In his May 10, 2022 response to interrogatories, Applicant stated that, although the credit bureau agencies could not tie the debts alleged in SOR ¶¶ 2.a and 2.b to his ex-wife, they agreed to remove them from his CBRs in August 2020, "due to them being 7 years old in collection." In his August 2021 response to interrogatories, he admitted that he had neither paid nor made arrangements to pay the debts alleged in SOR ¶¶ 2.a and 2.b. He claimed that he had been fighting to get the debts removed from his CBRs, and despite being successful at times, they "always reappear" on his CBRs. He maintained that his ex-wife opened both loans in his name during their divorce. He acknowledged that he had no way to prove it since his ex-wife "unfortunately had all of my information," which she used to open the two loan accounts online, making it appear as if he "took out these loans legally." (GE 2 at 6-7; GE 3 at 2, 8)

In his Answer, Applicant claimed that a "debt advisor" told him not to pay any of the alleged debts. He anticipated that all three debts would be removed from his CBRs by July or August of that year. He attributed all three debts to his ex-wife. He claimed that after he asked her for a divorce, she "took money under my name" and relocated to Country B because she did not want the divorce.

Applicant discussed all three debts at the hearing. Regarding SOR ¶ 2.a, he acknowledged that he knew about the debt since at least 2016 or 2017, and that when he asked his ex-wife about this debt while they were married, she wife denied taking any loans out in his name. He initially affirmed that he had never contacted the creditor of the debt. Then, he claimed that, while he was in the military and still married to his ex-wife, he emailed a collection company about the debt more than once on dates that he could not recall. He maintained that the collection company would not provide him any information beyond stating that he was obligated to pay the debt because he was the named account holder. He denied responsibility for repaying the debt, reiterating his belief that his ex-wife was responsible for the debt. He did not proffer a plan to resolve the debt besides waiting for it to be removed from his CBRs pursuant to the statute of limitations. (Tr. at 26-29, 63-75)

Regarding SOR ¶ 2.b, Applicant denied responsibility for repaying the debt. He initially attributed the debt to his ex-wife and denied that he opened the loan. Upon cross-examination, he acknowledged that he opened the loan. Without providing documentary evidence, he claimed that he paid it in full via monthly installments of "a couple hundred bucks." (Tr. at 26-29, 63-64, 72-73)

Regarding SOR ¶ 2.c, Applicant explained that the debt involved a U.S. cell phone he owned prior to moving overseas on an unspecified date. He claimed that: (1) he made timely payments each month and never missed a payment, including after he stopped using the cell phone when he moved overseas; (2) he continued making payments so he could maintain his U.S. cell phone line; (3) after he learned, at some point, that his provider cut off the line and cancelled his contract, he contacted the provider to inquire about making a payment to get the line back and was told that the line was cut off because he was only allowed to keep an inactive line for "up to a year." Without providing documentary evidence, he insisted that he paid the debt and did not understand why it appeared delinquent on his CBR. Upon cross-examination, Applicant acknowledged that he was not sure whether or when he paid the debt but maintained that he "must have paid it because they took it off [his CBR] . . . it hasn't been on there for seven years." (Tr. at 28-29; Tr. at 74-75)

Debt-Resolution Efforts with Companies 1 and 2

In December 2015, Applicant enrolled in a debt consolidation program with Company 1 to resolve six debts totaling $28,378, including the debt alleged in SOR ¶ 2.a. He agreed to make $319 semi-monthly payments beginning in January 2016, and continuing for 33 months, from which Company 1's fee and his creditors would be paid. Company 1 agreed to engage with his creditors to negotiate settlements on the debts enrolled in the program; and to pay the amounts owed to the creditors of those debts that were successfully settled. At the hearing, Applicant estimated that he paid a total of about $1,200 to Company 1. The record did not include documents corroborating any payments Applicant made to Company 1, or that Company 1 made to his creditors. (AE D; Tr. at 133)

In March 2018, Applicant retained the services of Company 2 to repair his credit with respect to delinquent debts totaling $32,051, including the debts alleged in SOR ¶¶ 2.a and 2.b. He agreed to pay $2,000 to Company 2 for its services via a one-time $400 payment and 16 monthly payments of $100, beginning in April 2018. He signed a form to authorize the automatic electronic transfer his payments to Company 2. Company 2 agreed to "contact each of the three credit reporting agencies who appear to be reporting information on the client's credit reports that must be corrected" and demand that "the erroneous information be corrected or removed." At the hearing, he maintained he paid a total of about $1,500 or $1,600 Company 2, which assisted him in successfully removing all three alleged debts from his CBR. The record did not include documents corroborating any payments Applicant made to Company 2. (AE B, C; Tr. at 29, 64-65, 67, 70)

In a post-hearing submission, Applicant stated that he was unable to provide receipts for any of the payments he made to Companies 1 and 2 because he believed that he made them either via autopay or phone. He also reiterated that he lacked any proof that his ex-wife took out "the loans under my name." (AE A)

Financial Information

On his August 2021 personal financial statement, Applicant reported a net monthly salary of $8,073, a monthly disability benefit of $1,500 for his 70% rating from the U.S. Department of Veterans Affairs (VA), and a $4,352 net remainder after paying expenses and payments for unalleged debts. In his FORM response, he characterized a $20,000 payment he received upon his separation from the military as severance pay. (GE 1; GE 2 at 8)

At the hearing, Applicant reported that he has earned an annual salary of about $121,000 or $122,000 since becoming employed by his current sponsor, that his monthly VA payment increased to $1,757 in early 2023; and that his monthly net remainder decreased to "$3,000 maybe." He stated that he earned an annual salary of $105,000 from July 2019 through March 2020; and about $113,000 or $115,000 from October 2020 through December 2022 or January 2023. He stated that he did not collect unemployment compensation during his unemployment in 2020. (Tr. at 79-83, 131-133)

Regarding child support, Applicant testified that he was ordered to pay $513 per month, pursuant to his divorce decree. He stated that "some years ago" he voluntarily began paying $530 per month. He also stated that he pays unspecified sums for "anything that [his child] requires." He maintained that he has never missed a child support payment. He stated that his ex-wife and child now reside in the United States. His most recent CBR from June 2023, reflects no new delinquent accounts and that he is living within his financial means. (GE 9; Tr. at 78-79, 113)

Whole-Person Concept

Applicant has consistently "performed very well" on the contract he has supported since December 2021. He was evaluated as a "Strong Performer" for the 2022 calendar year. In October 2023, his program manager wrote a letter advocating for him to maintain his security clearance. At some point, Applicant received a cash award in recognition of his contributions to the overall success of his team and mission. (AE A, E)

Applicant stated that he "never had any issues" until his divorce (GE 2 at 7). In his Answer, he stated that he has never had any security incidents. He also declared,

> The air force taught me integrity first and service before self and excellence in all we do and that is why I have been honest in all my responses. Upholding the values of my clearance and protecting the US government has always been my concern. I would never do anything to jeopardize that.

In his FORM response, Applicant stated,

> I am human and I have made very very small mistakes once I left active duty, but nothing I've done is that serious to make me seem like some kind of insider threat. This same kind of thing is what happens in the military and why I chose to leave in the first place. I have said this before and I will say

it again. I will never do anything to jeopardize the national security of my country. I took an oath and that oath is valid till the day I die.

During the hearing, Applicant stated,

> . . . I'm not perfect. I did make a few mistakes here and there, you know. Obviously if I didn't even date, if I didn't even date, you know, foreign girls we probably wouldn't even be here, you know. Or put some of this stuff on here correctly, we probably wouldn't even be here. Big mistake on my part. I apologize for that. But as far as my job goes, I'm amazing at my job. I love my job . . . I've gotten coined a couple times . . . at work . . . As far as my character goes, I can say . . . more than 90 or something percent of the time I'm pretty careful . . . I don't do anything, besides dating women, that would like jeopardize my clearance. I don't do anything, my clearance is my life, right? Like I said, in the future I want to get a poly, right? So I want to learn to tell the truth. Let the government know whatever they want to know. I have no secrets. I'll tell them everything. A lot of people told me that I probably was too honest. They say, you probably shouldn't have said what you said, you were too honest. And I was like, well, what's the point of getting a poly if you're just going to lie. Like, that's why people fail the poly, you're lying. I don't understand the reason. Just tell them the truth, they're going to find out anyway, it's the U.S. government. You have a clearance, you can't hide the truth from the U.S. government they're going to find out eventually. Just say what it is. Good or bad, you know what I mean. (Tr. at 139-142)

Policies

"[N]o one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)). 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." (*Egan* at 527). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and reliable information about the person, past and present, favorable and unfavorable.

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 that 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 made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." (EO 10865 § 7). Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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. (*Egan* 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 (4th 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. (ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016)). 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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

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)). "[S]ecurity clearance determinations should err, if they must, on the side of denials." (*Egan* at 531; AG ¶ 2(b))

Analysis

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 . . . .

Applicant's 2020 EQIP falsification establishes the concern set out in AG ¶ 15, and renders potentially applicable the following disqualifying condition in AG ¶ 16 under this guideline:

> (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Because the falsification allegation is controverted, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. An applicant's education and experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate.

I do not find credible Applicant's explanations and excuses for his 2020 EQIP falsification, particularly given his educational background, military experience, and security clearance history. On his 2020 EQIP, by responding "no" to two different questions about his disciplinary record in the military and by specifying the reason for his separation from the military as "enlistment ended," he revealed an awareness of the potential negative impact that the Article 15 could have on his security clearance eligibility. That awareness is underscored by the fact that he did not acknowledge the Article 15 until after confrontation. He demonstrated his knowledge and understanding of the meaning and security significance of "close and/or continuing contact with a foreign national" and "financial support" of a foreign national by voluntarily disclosing such information without provocation during his 2021 SI. Accordingly, I find substantial evidence of an intent on the part of the Applicant to omit security-significant information from his 2020 EQIP. AG ¶ 16(a) is established.

Applicant's solicitation of a prostitute while traveling overseas in or around late 2019 or 2020, establishes the concern set out in AG ¶ 15, and the following disqualifying condition in AG ¶ 16 under this guideline:

> (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 . . . (3) while in another country, engaging in any activity that, while legal there, is illegal in the United States.

Having considered all of the factors in AG ¶ 17 that could mitigate the concerns under this guideline, I find the following relevant:

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

Applicant deliberately concealed reportable and security-significant information from the Government when he completed his third security clearance application. He paid for sex overseas while in possession of a security clearance, knowing that prostitution is illegal in the United States. Those actions demonstrate a pattern of poor judgment and willingness to place his own self-interest above his security obligations.

Applicant eventually disclosed the Article 15 and his reportable involvement with foreign nationals. He solicited a prostitute one time under circumstances not likely to recur. However, his failure to acknowledge or accept responsibility for any wrongdoing undercuts mitigation. Moreover, his continued lack of candor and inconsistencies throughout the record not only damage his credibility, but also exacerbate the concern about his reliability, trustworthiness, and judgment. I find particularly troubling his attempts to backtrack, downplay, and redefine his involvement with his current wife, her mother, and the Country F national, given that he had already disclosed the true nature and extent that involvement during his 2021 SI. His feigned ignorance of his security clearance obligations and plain English terminology is incredulous considering his background, training, and experience.

Applicant has not demonstrated a sufficient pattern of modified behavior to demonstrate reform. Having had the opportunity to observe his demeanor and credibility, I am not convinced that his lack of candor is unlikely to recur. I have doubts about his current reliability, trustworthiness, and judgment. There remain ongoing concerns about his susceptibility to exploitation, manipulation, or duress. AG ¶¶ 17(a), 17(c), 17(d), and 17(e) are not established.

Guideline F: Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

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 . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012))

Applicant's unresolved debts establish the following disqualifying conditions in AG ¶ 19 under this guideline: (a) inability to satisfy debts; and (c) a history of not meeting financial obligations.

Having considered all of the factors in AG ¶ 20 that could mitigate the concerns under this guideline, I find the following relevant:

> (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;
>
> (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
>
> (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant failed to establish that the debts alleged in SOR ¶¶ 2.a through 2.c largely resulted from circumstances beyond his control or that he acted responsibly to resolve them. There is no evidence in the record that Applicant received financial counseling, from either Companies 1 or 2, or elsewhere. I considered the fact that the alleged debts did not appear on his August 2022 or June 2023 CBRs and may be no longer collectible

due to the expiration of a statute of limitations. However, earlier CBRs established them as his valid debts. The fact that he failed to resolve the debts during the time that they were legally collectible remains security significant. He failed to provide documentary evidence to substantiate the basis of his dispute regarding the debt alleged in SOR ¶ 2.a or to corroborate his efforts to pay or otherwise resolve the debts alleged in SOR ¶¶ 2.b and 2.c.

Adjudication of security clearance eligibility involves evaluating an applicant's judgment, reliability, and trustworthiness, and is not a debt-collection proceeding. The AGs do not require an applicant to immediately resolve or pay each debt alleged in the SOR, or to be debt free; nor is there a requirement that the debts alleged in an SOR be resolved first. An applicant need only establish a plan to resolve the indebtedness and then take significant actions to implement the plan, which Applicant failed to do. Based on the existing record, I am unable to conclude that his indebtedness is not likely to recur and no longer casts doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) are not established.

Whole-Person Analysis

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 commonsense judgment based upon careful consideration of the AG, 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 E and F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines E and F and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by his personal conduct and indebtedness. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security to continue his eligibility for access to classified information.

Formal Findings

Formal findings 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 E:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a – 2.c:	Against Applicant

Conclusion

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

Gina L. Marine
Administrative Judge