



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



In the matter of:)	
)	
XXXXXXXXXXXXXXXXXX)	ISCR Case No. 22-01002
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Dan O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

06/20/2024

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant provided evidence sufficient to mitigate the national security concern raised by his foreign influence, sexual behavior, and personal conduct. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his security clearance application (SCA) on February 16, 2019. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on August 24, 2022, detailing security concerns under Guideline B, Foreign Influence, Guideline D, Sexual Behavior, and Guideline E, Personal Conduct The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant submitted an undated answer (Answer) to the SOR and elected a decision on the written record by an administrative judge of the Defense Office of

Hearings and Appeals (DOHA). On November 8, 2022, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 9. DOHA sent the FORM to Applicant on that same day, who received it on December 12, 2022. On February 6, 2023, he elected instead to have a hearing via video teleconference. The case was assigned to me on July 17, 2023. On January 5, 2024, DOHA notified Applicant that the hearing was scheduled to be conducted on January 23, 2024, via video teleconference. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 5 and Hearing Exhibit (HE) 1 (Administrative Notice for the Republic of the Philippines) were admitted without objection. Applicant's Exhibit (AE) A was admitted without objection.

Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about the Republic of the Philippines. The brief and supporting documents for the Republic of the Philippines are HE 1. The relevant facts are addressed in the Findings of Fact below. The Government was offered the opportunity to submit an administrative notice for the United Kingdom but elected not to do so.

Findings of Fact

This is a case under Guidelines B, D, and E. After a thorough and careful review of Applicant's testimony, the pleadings, and the parties' exhibits, I make the following findings of fact:

Under Guideline B, the SOR alleged that Applicant: (a) provided about \$600 monthly from June 2011 to January 2020 to a friend who is a citizen and resident of the Philippines; (b) provided about \$200 monthly from June 2011 to January 2020 to a friend who is a citizen and resident of the Philippines; (c) provided about \$8,400 from about February 2014 to January 2020 to a friend who is a citizen and resident of the Philippines; (d) provided about \$4,500 from September 2013 to January 2020 to a friend who is a citizen and resident of the Philippines; and (e) provided \$100 to \$ 300 monthly from June 2010 to December 2013 to a friend who is a citizen and resident of the United Kingdom. (SOR ¶ 1.) He admitted those allegations, except for exact dates and amounts. (Answer ¶ 1.)

Under Guideline D, the SOR alleged that: (a) Applicant's spouse is not aware of the allegations set forth in SOR subparagraphs 1.a to 1.e above; and (b) in about June 2007, he had sexual relations with the friend described in subparagraph 1.a above. (SOR ¶ 2.) He admitted those allegations, except for "one of the ladies" alleged in SOR subparagraphs 1.a to 1.e, whom he did not identify further in his Answer. (Answer ¶ 2.)

Under Guideline E, the SOR cross-pleaded the allegations set forth in SOR ¶¶ 1.a to 1.e. Applicant admitted this allegation. (Answer ¶ 3.)

Applicant is 67 years old, married since November 1991, and has two grown children, a daughter 27 and a son 22. His wife was born in Country Z but is a U.S.

Permanent Resident. He earned his associate's degree in 1979 and his bachelor's degree in 2004. He served for 20 years on active duty with the U.S. Army until 2004, when he retired with an honorable discharge. After serving in the Army, he worked for 19 years in various positions for defense contractors. He reported one period of unemployment from January 2014 to April 2014. Since October 2018, he has been employed by a defense contractor. He currently is working in a country in the Middle East and earns \$110,000 per year. When he is overseas, he lives on military bases at no charge but pays for his own food. (GE 1; Tr. 30-33.)

During Applicant's employment for one defense contractor, he was sent to the Philippines for training. There he saw all the poor people in certain areas. He considers himself to be a humanitarian. He supports three children through a religious children's fund in the United States. That fund takes care of impoverished families. He donates \$60 per month to that fund and has done so since 1983. (Tr. 21-22, 45-46.)

During Applicant's 20 years in the Army, he spent nine of them in a country in Asia (Country Z). After his Army service, he stayed in that country working for a defense contractor for five years. He met his wife in Country Z, she is a citizen of Country Z, his son was born in Country Z, and he retired in Country Z. He saw that poverty was rampant. He said his "eyes woke up." He decided he "would like to do something to maybe help." He "started helping people that [he] met." He asked "am I supposed to run and tell my wife every time I do something, even though I have donated considerable amount, I guess, to help these ladies that I met, in different areas, in different ways that I met them and things like that?" (Tr. 22-24; GE 1.)

SOR ¶ 1.a. Applicant testified about his friend who is the subject of SOR ¶ 1.a (Ms. Alpha). At the time, he was working in Country Z and took a job about three hours from home. He had an apartment but would go home on weekends. This was in early to mid-2007. He met Ms. Alpha during the week in a club where she was working. She worked "soliciting drinks from GIs in exchange for sexual favors." They "had a physical relationship." (Tr. 24, 39; Answer ¶ 1.a; GE 2.)

Ms. Alpha spoke to Applicant about her family and that she had two children at the time in the Philippines and had to work. She moved to Country Z "so she could work and the only option that she had was working in a club." He "just wanted to get to know her and just to chat and have a few drinks." "And that's where my weakness came in that I, unfortunately . . . we did have sex, I think, twice." He testified that he thought "no, this is it." "We stayed friends, but that was it as far as the sexual activity, which I do regret." He said: "I'll be honest, Your Honor, as of right now, and I'm probably going to tell my wife, but that's 17 years ago, and is that wrong not to tell her? I'm not sure." (Tr. 25.)

Applicant ended up working away from home for only a few months and then went home when a job opened up there. Ms. Alpha met a soldier and became pregnant. She ended up having the baby in Country Z and then went back to the Philippines working with a new baby, two other children, and three different fathers. He decided he would help

her “a little bit.” He sent her “maybe \$50 a month . . . to help her get by and have food for her children.” (Tr. 25-27.)

A couple of years later, Applicant went to training in the Philippines. He visited Ms. Alpha and her children. He finished his training and returned to Country Z. He kept in touch. He told her he did not want this to be permanent, but he wanted her to get some education. He paid for her college education, which was very cheap in the Philippines. She got her teacher certificate and began teaching. He began providing financial support in 2009 or 2010 and ended in about 2021 or 2022. (Tr. 27-28, 52.)

Applicant thought “I can’t be doing this forever and I wanted to cut them off as soon as they became self-supportive.” “Obviously, so [Ms. Alpha] became self-supportive.” “I cut everybody off and I’m like, this is it.” He cut “everybody” off and has not talked to anybody in over a year and a couple of them not for four or five years. By “anybody” he meant the women he supported. (Tr. 29-30.)

Applicant stated that payments to Ms. Alpha were not \$600 monthly. He did not start paying \$600 a month. It went up and down. The only time he spent that much was when she was going to college. Then he was paying for college and support for her children. He confirmed that he first met her in mid-2007 when he was living with his family in Country Z. He was stationed a few hours away from his family. They met in a sex bar and had sex on two occasions. He denied the interpretation of his personal subject interview (PSI) that he had “a long physical relationship with her.” He was not sure where that came from. (Tr. 38-40.)

Applicant’s wife is not aware of his infidelity. Ms. Alpha has three children. He is not the father of any of those children. A couple of years later, Ms. Alpha returned to the Philippines, and he decided to provide her with some support. (Tr. 40-41.)

Applicant provided various amounts of financial support to Ms. Alpha. His wife was not aware of that financial support to Ms. Alpha “at that time.” His wife became aware “in bits and pieces in the past couple of years.” “She’d find out about certain things, and she was getting an idea.” About a year ago, he finally “opened up” that “a little bit more than this had happened.” His wife was not happy about it and went “ballistic.” After a while, his wife “got over it” and “didn’t talk about it anymore.” He “had already stopped [the financial support], so everything is getting better.” (Tr. 41-42.)

The security clearance process did not prompt him to have the conversation with his wife. His Answer stated that he communicated with Ms. Alpha about once a month. He denied that. Currently, he does not “communicate with anybody.” He “finally was able to cut ties with everybody because he had to . . . [and] wanted to.” He did not use the religious children’s fund to support Ms. Alpha. He never got the impression that Ms. Alpha was duping him. She always sent him receipts. (Tr 42-46.)

Cross-examination established that GE 1 is the most accurate record of Applicant’s financial contributions to Ms. Alpha (and his other friends alleged in SOR ¶ 1). (Tr. 44-

45.) After she had her baby in Country Z, she returned to the Philippines in January 2011. The father was not paying support, so Applicant started paying her \$200 a month and then in 2012, 2013, and 2014 increased it to \$300 a month. In 2015 to 2018, he paid for her college at about \$500 a month. In 2018, he increased it to \$600 a month to pay for some typhoon damage. She always sent him receipts. He estimated that over about eight years he sent her \$40,000. (GE 1 at 48.)

Applicant's personal subject interview (PSI) was consistent with his hearing testimony. Ms. Alpha was a Philippine national, and he only visited her once in the Philippines when he was there for training for his employer. During his discussion of Ms. Alpha in his PSI, he provided no other information relevant to concerns under Guideline B. (GE 2 at 9.) The following passage from the PSI pertains to Ms. Alpha and to Applicant's four other friends who are subjects of the SOR:

None of these foreign nationals has ever served in any foreign countries' military, government or intelligence services, and would not have any knowledge that [Applicant] is currently undergoing a background check for security clearance.

[Applicant] has never been solicited for information that was considered classified, sensitive, or proprietary in nature. He claims no developed preference or feelings of sympathy, loyalty and/or allegiance to any foreign government, interest, individual and/or entity as a result of his foreign associations.

[Applicant] initially acknowledged the fact the [*sic*] he may be susceptible to blackmail, because he does not want his wife to find out about these women, since it would likely result in marital strife and possible divorce. However, he went on to states [*sic*] that he loves his country, is loyal and would never do anything that would cause harm or damage to his country, to include divulging classified information to an unauthorized party. (GE 2 at 11.)

SOR ¶ 1.b. Applicant testified about his friend who is the subject of SOR ¶ 1.b (Ms. Bravo). He met Ms. Bravo in an online game in about August 2010. He could not recall much about the game; it was a chat URL [Uniform Resource Locator]. He met her once in person in 2012 when he was in the Philippines for training but had no physical relationship with her. She just showed him around the town. He agreed that GE 1 shows his estimate that he provided about \$11,000 in support to Ms. Bravo. She always sent him receipts. He finally cut her off in about 2022, because his wife knew about his financial contributions but was not speaking about it, and he had lost his job. [A loss not reported in his SCA/GE 1.] (Tr. 49-51, 70.)

Applicant's PSI was consistent with his hearing testimony, except that he is recorded as meeting Ms. Bravo twice in person (not once) in 2012 in the Philippines while

in training for his work. During his discussion of Ms. Bravo in his PSI, he provided no information relevant to concerns under Guideline B. (GE 2 at 10.)

GE 1 reported that Applicant helped Ms. Bravo with about \$100 per month beginning in June 2011 to complete computer certifications. He also paid for a two-year college degree, so she could set up an Internet café. The café operated for about two years, but she was not making enough money. He then paid for her to go through a dental program and then helped with medical bills. She is now self-sufficient with a clothing business. She showed him her receipts. (GE 1 at 49.)

SOR ¶ 1.c. Applicant testified about his friend who is the subject of SOR ¶ 1.c (Ms. Charlie). He agreed that GE 1 shows he provided an estimated \$8,500 in support to Ms. Charlie. He did not keep track of contributions on a spreadsheet. That support was from February 2014 to January 2020. He never met her in person. He has not spoken to her in years. (Tr. 55.) GE 1 reported that he provided “\$100 a month for 18 months and \$150 a month for 37 months + \$1,000 for medical n [sic] a small business infusion.” She showed him her receipts. (GE 1 at 50.)

Applicant’s discussion of Ms. Charlie in his PSI was consistent with his testimony. He provided no information relevant to concerns under Guideline B. (GE 2 at 10.)

SOR ¶ 1.d. Applicant testified about his friend who is the subject of SOR ¶ 1.d (Ms. Delta). He remembered very little about Ms. Delta. He met her in the Philippines. He provided some financial support from about May 2014 until “probably the last time [he] sent her money.” He could not remember when last they chatted. She sent him receipts and pictures of the club. (Tr. 55-57, 59-60.)

GE 1 reported that Applicant met Ms. Delta in about September 2013 during a trip to the Philippines to take a computer course. She told him about her dream of owning a business. It took him about six to eight months to agree to help her. He gave her about \$500 to \$600 in May 2014 for rent to open a small club. She then saw a nicer larger club, so he helped her with the rent that went from \$100 to \$300 per month. He saw her being proactive and dropped his contribution to \$75 per month to \$50 and down to zero. He told her about that schedule. She showed him all her documents and receipts. He estimated that he contributed a total of \$4,000, about \$100 per month for about 36 months plus start-up costs for the club. (GE 1 at 50-52.)

Applicant’s discussion of Ms. Delta in his PSI was consistent with his testimony. He provided no information relevant to concerns under Guideline B. (GE 2 at 8-9.)

SOR ¶ 1.e. Applicant testified about his friend who is the subject of SOR ¶ 1.e (Ms. Echo). Ms. Echo is a citizen of the United Kingdom, and they met on a website. They never met in person. It was a site where one could pay for virtual sex, but they did not do that. He and Ms. Echo stayed friends. He ended up providing financial support to Ms. Echo, “because she looked like she needed a little support, and [he] sent her a little bit.”

“It really wasn’t that much, and it didn’t last very long.” He sent her an estimated \$3,400. (Tr. 58-60.)

GE 1 reported that Applicant provided Ms. Echo about a total of \$3,400 from about \$100 per month in November 2012 to \$300 per month ending in December 2013. (GE 1 at 51.)

Applicant’s discussion of Ms. Echo in his PSI was consistent with his testimony. He provided no information relevant to concerns under Guideline B. (GE 2 at 11.)

Applicant testified that he is no longer involved with women in online forums or social games. He is not meeting women in person or online. He has not started providing financial support to any other women not listed in the SOR. (Tr. 54.) The women never sent sexually explicit photos to him. They never engaged in online sex. He never had sex with any of them except with Ms. Alpha. (Tr. 61.) Based on GE 1, he provided about \$66,900 in support to the women he discussed from about 2010 to 2022. He never felt he was being duped by these women. (Tr. 46-47, 69.)

The Government conceded that it did not believe there is anything in the record that Applicant’s spouse would use to blackmail him that would jeopardize the national interest if she knew the entirety of his record (including his infidelity). (Tr. 79.)

Applicant testified about his home mortgage payments, more specifically GE 3 at 4 (January 2023 credit report), showing his mortgage past due in the amount of \$61,778 (not alleged in the SOR). He explained that he was in forbearance for almost two years due to COVID. He was unemployed for six months and was unable to make payments. He was not sending monthly payments to his friends overseas. Applicant’s house was scheduled to go into foreclosure. He was able to get that fixed and is out of foreclosure and is making his monthly payments. (Tr. 67-68.) AE A (January 2024 credit report) shows his home mortgage to be “Current.”

The Philippines is a multiparty, constitutional republic with a democratically elected president and bicameral legislature. The U.S. Department of State travel advisory for the Philippines is Level 2: Exercise Increased Caution due to crime, terrorism, civil unrest, and kidnapping. The State Department has also catalogued and taken notice of human rights issues in the Philippines. (HE 1.)

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are

flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Guideline B, Foreign Influence

The security concern under the guideline 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. Two 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.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following is 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 U.S.

Applicant served on active duty in the U.S. Army for 20 years until his honorable discharge and retirement in 2004. For nine of those twenty years he served in Country Z. When he began employment with a defense contractor after retirement, he returned to Country Z in 2007. There he became friends with the five women who are the subject of this case.

Applicant considers himself to be a humanitarian and has supported three impoverished families in the U.S. since 1983 with monthly contributions to a charitable fund. During his military service in Country Z, he saw that poverty was rampant. He decided to do something to help.

None of the women were residents or citizens of Country Z. Applicant was, however, working and living there when he made their acquaintance. ("Acquaintance" is used, because he never personally met two of the five women.) Four of the five women Applicant befriended are citizens and residents of the Philippines (Alpha through Delta). Echo was a resident and citizen of the United Kingdom.

Applicant met Alpha in person a number of times beginning in 2007 in Country Z. She was the only woman with whom he had sex (twice). He reported this in his personal subject interview and his Answer. He provided financial support from 2009 or 2010 to 2021 or 2022. He paid for her college degree and helped with child expenses. (Applicant has no children with any of these women or with any women other than his spouse.) He estimated he sent her \$40,000 over eight years. She always sent him receipts.

Applicant met Bravo online in about August 2010. He met her twice in person in 2012, when he was in the Philippines for training, but they had no physical relationship with her. She just showed him around the town. he provided about \$11,000 in support to Bravo. She always sent him receipts. He finally ended her support in about 2022.

Applicant met Charlie and provided about \$8,500 in support from February 2014 to January 2020. He never met her in person and has not spoken to her in years. He provided support for medical expenses and for her small business. She always sent him receipts.

Applicant met Ms. Delta in about September 2013 when he made a trip to the Philippines to take a computer course. She told him about her dream of owning a

business. He helped her achieve that dream and estimated he sent her a total of \$4,000. His support ended in about 2016 or 2017. She always sent him receipts.

Applicant met Echo (a citizen and resident of the United Kingdom) on a website in 2012. They never met in person. It was a site where one could pay for virtual sex, but they did not do that. He provided financial support, “because she looked like she needed a little support.” He provided Echo about a total of \$3,400 from about November 2012 to December 2013. She always sent him receipts.

These friendships were carried on for over twenty years virtually, that is, via email, websites, in chat rooms, gaming sites, and other electronic means. There were very few in-person meetings. None of Applicant’s financial support was provided in-person. There is no evidence that any of the online sites used exclusively portrayed sex, sexuality, pornography, or any other nefarious scenarios. Those sites that could have been used for those purposes were not so used by him or his friends. He provided about \$66,900 in support to these friends from about 2010 to 2022. He has ceased communicating with those friends and providing any financial support. His spouse now knows about his past financial support but not the total amount he paid. He has not disclosed to his spouse his sexual relations with Alpha in 2007. AG ¶¶ 7(a) and (b) apply in part to Applicant’s female relationships, because they can be deemed “friends” and “foreign persons.”

There is no evidence that any of Applicant’s foreign friends has ever served in the Philippines’ or any other foreign countries’ military, government, or intelligence services. They would not have any knowledge that he is currently undergoing a background check for security clearance. He has never been solicited by these friends for information that was considered classified, sensitive, or proprietary in nature. He claims no developed preference or feelings of sympathy, loyalty and/or allegiance to the Philippines or any other foreign government, interest, individual and/or entity as a result of his foreign friends. There is no evidence that his financial support to his foreign friends created a heightened risk of foreign exploitation, or a conflict of interest between his obligation to protect classified information and his desire to help one or more of his friends. In addition, in light of the nature of his relationships with these foreign friends, it is unlikely that he 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. The remainder of AG ¶¶ 7(a) and (b) does not apply and, in any event, it is mitigated by AG ¶ 8(a). I find for Applicant on SOR ¶¶ 1.a through 1.e.

Guideline D, Sexual Behavior

The concern under this guideline 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. . . .

The following are the four potentially disqualifying conditions:

AG ¶ 13(a): sexual behavior of a criminal nature, whether or not the individual has been prosecuted;

AG ¶ 13(b): a pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop;

AG ¶ 13(c): sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and

AG ¶ 13(d): sexual behavior of a public nature or that reflects lack of discretion or judgment.

The following are two potentially mitigating conditions:

AG ¶ 14(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; and

AG ¶ 14(c): the behavior no longer serves as a basis for coercion, exploitation, or duress.

Under this Guideline, the SOR alleged that Applicant's spouse is unaware of the financial support he provided to the five women alleged in SOR ¶¶ 1a. through 1.e. Providing financial support alone to a person is not "sexual behavior" that is a disqualifying condition under Guideline D. Moreover, although not pleaded in the SOR, there is no evidence of any behavior that is criminal, compulsive, caused him to be vulnerable, or public in nature. There is no evidence that the women duped him or made demands on him of any sort. On the contrary, the record shows that his financial assistance was completely voluntary and was supported by receipts. I find that the Government has not established a case under SOR ¶ 2.a. I find in favor of Applicant on SOR ¶ 2.a.

To the extent that Applicant's sexual relations with Alpha is deemed to have triggered AG ¶ 13(c), his conduct is mitigated. The sexual conduct happened in 2007, 17 years ago. That conduct occurred twice. He has ceased communications with and any financial assistance to Alpha. Any basis for coercion, exploitation, or duress is speculative and has long since evaporated. The Government does not believe his spouse would use his infidelity to jeopardize national security. His conduct is mitigated under AG ¶¶ 14(b) and (c). I find in favor of Applicant on SOR ¶ 2.a.

Under this Guideline, the SOR also alleged that Applicant's spouse is not aware of his sexual relations with the woman described in SOR ¶ 1.a. His spouse's unawareness of that conduct is not "sexual behavior" that is a disqualifying condition under Guideline

D. In any event, it is mitigated under AG ¶¶ 14(b) and (c). I find in favor of Applicant on SOR ¶ 2.b.

Guideline E, Personal Conduct

The security concern relating to Guideline E for personal conduct 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.

Under Guideline E, the SOR cross-pleaded the allegations set forth in SOR ¶¶ 1.a to 1.e. For the reasons set forth under the Guideline B discussion, I find in favor of Applicant on SOR ¶ 3.

The Whole-Person Concept

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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the “whole-person” concept and its factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with no questions about his eligibility and suitability for a security clearance. For these reasons, I conclude that the security concerns under Guideline B, foreign influence, Guideline D, sexual behavior, and Guideline E, personal conduct, have been mitigated.

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. – e.:	For Applicant
Paragraph 2, Guideline D:	FOR APPLICANT
Subparagraphs 2.a. – b.:	For Applicant

Paragraph 3, Guideline E:

FOR APPLICANT

Subparagraph 3.a.:

For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Philip J. Katauskas
Administrative Judge