



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 23-00141  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: Dan Meyer, Esq.

09/11/2024

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines J (Criminal Conduct), D (Sexual Behavior), and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 19, 2018. On June 6, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines J, D, and E. The DCSA CAS acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on July 23, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 20, 2023, and the case was assigned to me on May 5, 2024. On May 17, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on July 17, 2024. On May 20, 2024, the hearing notice was amended to provide for an in-person hearing on the same day. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 8 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open until August 5, 2024, to enable Applicant to submit additional evidence. He timely submitted AX G through R, which were admitted without objection. DOHA received the transcript (Tr.) on July 29, 2024. The record closed on August 5, 2024

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.c, 2.a, and 3.a. He denied the allegation in SOR ¶ 3.b. His admissions are incorporated in my findings of fact.

Applicant is a 45-year-old senior information security engineer employed by a defense contractor since April 2019. He is also self-employed as director of operations for his own consulting company. He attended college from August 1997 to April 2003 and received a bachelor's degree. While in college, he participated in the Reserve Officers Training Corps, and was commissioned as a second lieutenant upon graduation.

Applicant served in the Army National Guard from May 1997 to February 2000, when he was transferred to the U.S. Army Reserve. He served on active duty as a reservist from April 2003 to July 2011, attained the rank of captain, and was medically retired. During his active service, he was deployed to a combat zone from May 2004 to February 2005 and from August 2006 to October 2007. (AX H) He was awarded the Joint Service Commendation Medal, Army Commendation Medal, Army Achievement Medal, Combat Action Badge, Parachutist Badge, and various service medals. (GX 4 at 7, 14; AX H) While serving as a second lieutenant in September 2004, his company commander recommended that he receive the Bronze Star Medal, but his award was downgraded to an Army Commendation Medal. (AX L)

In October 2007, Applicant was medically evacuated from his overseas assignment to the United States. (AX R) He was placed on the temporary disability retired list in July 2011, and retired because of permanent physical disability in April 2014. (AX I) His medical retirement was due to multiple conditions, including post-traumatic stress disorder, traumatic brain injury, Achilles tendon rupture, and degenerative joint disease of the thoracolumbar spine. In April 2015, the Department of Veterans Affairs determined that he was entitled to 100% disability benefits for his service-connected disabilities. (AX O)

After Applicant's retirement, he was employed by federal contractors, and he started his own business in July 2018. He received a security clearance in October 2004.

Applicant married in December 2003, divorced in January 2008, and married in May 2010. He has two children from his second marriage, ages 14 and 11.

The charges alleged in SOR ¶ 1.a were the result of incident involving his then girlfriend and another woman. He was accused of grabbing and squeezing the two women by the neck for approximately 30 seconds, pushing one of the women onto a bed and squeezing her neck until she could not breathe, and slamming one of the women into a wall while choking her. The arrest is reflected in GX 8. Applicant admitted the arrest in his answer to the SOR.

In Applicant's response to the SOR, he stated that, while he was separated from his spouse in 2017, he began a relationship with Woman A. On the night of May 5 and the morning of May 6, 2017, Applicant, Woman A, and Woman A's friend (Woman B) returned to a hotel room he had rented after a night of bar hopping and drinking. Applicant testified that he stopped drinking after they left the second bar, but the two women continued drinking at a third bar. (Tr. 34)

At the hearing, Applicant testified that both women were heavily intoxicated, and Woman B was invited to the room because she was too intoxicated to take a taxi or subway train home. There was only one bed in the room. Woman A put Woman B into the bed and placed a trash can next to the bed in case Woman B vomited. Woman A and Applicant got into the bed, with Applicant between the two women. (Tr. 34-36) According to Applicant, Woman A wanted to have intercourse, but he declined, because Woman B was also in the bed and because Woman A was drunk. (Tr. 102) Woman A argued and asked Applicant if he wanted to have intercourse with Woman B. Woman A started calling him names and hitting him. Woman B woke up and the two women started fighting. Applicant testified that he separated the two women with his hands on their necks. He told both women to leave the room. When they refused, he forcibly ejected them. A hotel security officer came to the room and asked if there was a problem, and Applicant told the security officer that he had ejected the two women from his room. About an hour later, several police officers came to the room and arrested Applicant and took him to the police station. He was detained for a few hours and then released. (Tr. 102-08)

Applicant admitted that he put hands on the necks of both women to keep them apart, but he denied choking them. (Tr. 105) He denied shoving one woman against a wall, but he admitted shoving her out of the room. He attended seven court hearings, represented by his brother, who is a lawyer. In February 2018, the charges were dismissed due to lack of evidence, failure of the arresting officer to appear in court, failure of Woman A to appear in court, and violation of his right to a speedy trial. (GX 6 at 4)

SOR ¶ 1.b alleges that Applicant engaged in prostitution on multiple occasions between 2003 and 2016 while holding a security clearance and working overseas with the U.S. military or as a federal contractor. During a polygraph pre-test interview in

February 2017, he disclosed that he had consorted with prostitutes on three occasions in 2009, 2011, and 2016. In another pre-test interview in November 2020, he admitted that he also consorted with prostitutes twice in 2003 and once in 2009 when on vacation in a foreign country. He claimed during his November 2020 interview that he had forgotten about the additional 2003 incidents and the 2009 incident when he was previously interviewed. (GX 5 at 2)

Applicant testified that he married his first wife shortly before deploying to a combat zone and they had spent only about 90 days together before he was assigned overseas and subsequently deployed to a combat zone. They had virtually no communication while he was in the combat zone. His mother-in-law told him that his wife was involved with a former boyfriend. (Tr. 27)

Applicant testified that he fell into deep depression after returning from combat duty. He disclosed to his commander that he had an extramarital affair and had been consorting with prostitutes, and he received a letter of reprimand for his conduct. (Tr. 55) The letter of reprimand is not included in the record. There is no evidence in the record reflecting that his extramarital affair and consorting with prostitutes violated any civilian laws in the countries where it occurred. The record does not reflect whether the reprimand was based on a violation of the Uniform Code of Military Justice. However, Applicant admitted in his answer to the SOR that his conduct was illegal.

SOR ¶ 1.c alleges that Applicant received a “happy ending” while receiving a massage on approximately two occasions in 2018 and 2020, while holding a security clearance and working as a federal contractor. During an interview preceding a polygraph examination on November 13, 2020, Applicant disclosed that he went to a massage parlor in 2018, while traveling away from home. He suffers from back pain and regularly receives massages to alleviate his back pain. He was unable to find a massage parlor from his customary franchise at home, and so he went to an alternate parlor. He paid \$20 for a massage, and the masseuse ended the session by masturbating him. He was surprised but made no attempt to stop it. He did not pay extra for the “happy ending.” (GX 5 at 2) There is no evidence in the record reflecting that his conducted violated local law. However, Applicant admitted in his answer to the SOR that his conduct was illegal.

In 2020, Applicant traveled to the same city and chose to get a massage in a similar area of the city. He intentionally did not return to the massage parlor that he used in 2018. (Tr. 99) The masseuse at this location began to masturbate him, but he stopped it by sitting up. (Tr. 88)

During a polygraph examination in February 2017, Applicant disclosed that he had engaged in prostitution on three occasions in 2009, 2011, and 2016. He did not disclose that he engaged in prostitution three additional times between 2003 and 2004 and again in 2011. He underwent another polygraph examination in November 2020, in connection with his application to another government agency for eligibility to have access to sensitive compartmented information. In his pretest interview, he admitted his additional involvement with prostitutes in 2003, 2004, and 2011. He told the polygraph examiner

that he had forgotten about those additional instances during his previous examination in February 2017. (GX 5 at 2)

When Applicant submitted his SCA in October 2018, he disclosed the following incident that occurred in a hotel room after a night of barhopping and drinking:

On May 6<sup>th</sup> 2017, at approximately 1:32 a.m., I was detained by Officer [name redacted]. I broke up a fight between two females (one was a friend of mine, the other was her friend) and escorted one out of my hotel room by her right arm after I had told both of them to leave on multiple occasions. Afterwards that same female called the cops and false claimed I “dragged” her.” There were no marks, no medical records, and they never showed up in court. . . . I demanded to see a judge to state my case and after a year of the prosecutor, the plaintiff, and the officers continually not being ready, the calendar judge finally threw the case out and expunged it as there was no evidence, no victim, and the prosecutor wasn’t ready.

(GX 3 at 57-58)

The summary of Applicant’s interview with a security investigator in February 2019 recites the following:

Subject was arrested by the [police] in 05/2017 for an unknown offense. Subject was located at [a hotel address] with his friend [name deleted] and her friend (name unrecalled). The two women began fighting and Subject asked them to leave. The women did not comply and Subject attempted to break up the fight by removing the women from the hotel. Subject was successful in removing both women from the hotel room. Subject then returned to the room and then approximately one hour later, the [police] arrived. The police informed the subject that [girlfriend’s friend] claimed that Subject dragged her from the room. Subject was then arrested for the incident and taken to the police precinct. . . . Subject appeared in [the court]. Subject does not recall the charges brought against him but the case was dismissed and expunged. The date of the outcome was 03/18. Subject did not have to pay a fine, did not attend classes or counseling. This did not contribute to any problems. Subject does not socialize or work with people who are involved in criminal activity. This is not likely to happen again and Subject does not intend to be involved in criminal activity in the future. Subject does not associate with the two women any longer and has not received any rehabilitation for this incident. This situation cannot be used against the Subject for blackmail or coercion. Subject’s brother, [name redacted] is aware of this incident.

(GX 4 at 19)

When Applicant submitted an SCA in April 2020 to another government agency, he gave the same description of the incident as he did in his October 2018 SCA.

At the hearing, Applicant testified that when he was arrested in his hotel room, the police officer told him that it was a domestic violence incident and that “whenever it’s one of these, somebody has to go down.” At the police station, he was again informed that it was a domestic violence situation. (Tr. 107-08) When he appeared before a judge “they read off a whole bunch of charges and stuff.” He left the courthouse with a half sheet of paper that told him when he was required to appear in court. (Tr. 107-09)

Applicant was interviewed by a security investigator in November 2020. According to the investigator’s report, Applicant told him that he was arrested and charged with strangulation and obstruction of breath or blood circulation. The investigator’s report of the interview recites the following:

On 6 May 2017, [Applicant] was arrested and charged with strangulation and obstruction of breath or blood circulation. He was in a hotel room in [a city] with his ex-girlfriend and her friend. He could not recall the name of her friend. They were sharing a hotel room with the intentions of have sexual intercourse. His ex-girlfriend became jealous of [Applicant] because she thought he was showing too much attention to her friend. She and her friend started arguing and engaged in a physical fight. [Applicant] attempted to step in between them and push them away from each other. In doing this, he placed his hands around their neck and chest areas to push them apart. He denied choking or strangling them. He then grabbed his ex-girlfriend’s purse and threw it out of the room. Her friend refused to leave, so he grabbed her arm and moved her out of the room. The two stood at the door and attempted to get back into the room; however [Applicant] refused to let them in.

(GX 6 at 3)

Applicant was interviewed by a polygraph examiner from another government agency on November 10, 2020. The report from this interview is not in the record, but it is referenced in a polygraph examiner’s report dated November 13, 2020. The November 13, 2020 report states that Applicant admitted that he placed his hands on the two women’s necks and chest areas but that he denied choking or strangling them. It states that Applicant provided the following additional information:

During this incident, S [Applicant] . . . placed one hand on the throat of each arguing woman. S did this not in an effort to assault them, but to keep them away from each other. S held each woman by the neck for about 30 seconds. During this 30 seconds, S applied a level of force of 2.5, if 1 is very slight force and 5 is the hardest S could have squeezed each throat.

Just after the double-neck squeezing, one of the women [Woman A] lunged at S and S pushed her onto the hotel bed. He then placed both hands around her neck and squeezed with a level 2.5 force again. This squeeze was strong enough that [Woman A] was unable to breathe. She kicked and punched at S in an effort to get him let go of her. S held [Woman A] with this 2.5 chokehold for about 5 seconds. S believed this choke was an attempt to subdue [Woman A], not an effort to assault her. It did not appear that [Woman A] has any bruising or injury. During subsequent legal proceedings, S's attorney was presented with photos of [Woman A's] neck. According to S's attorney (his brother) the images did not show any injury to [Woman A].

(GX 5 at 3)

At the hearing, Applicant testified that the numerical descriptions of the degree of force he used in the November 10 interview were suggested by the investigator and he agreed with them. (Tr. 145-46)

Applicant's former girlfriend (Woman A), who was involved in the incident in the hotel, submitted a statement describing the incident that was admitted in evidence at the hearing. She stated that Applicant never attacked her or her friend, but that her friend refused to leave the hotel room when requested, and he grabbed her arm and forced her to leave the hotel room. She stated that her friend called the police and accused Applicant of attacking them. (AX D at 8-9)

Applicant's former business partner and coworker, who has been a federal employee for 20 years, held high-level clearances, and is a credentialed background investigator, submitted a statement vouching for Applicant's trustworthiness, integrity, and emotional stability. He submitted his statement after Applicant's clearance was suspended, pending completion of a security investigation. He did not state whether he is familiar with the allegations in the SOR. (AX D at 1-3)

A close friend of Applicant, who is a senior adjudicator and personnel security specialist employed by the U.S. Government and has known Applicant for more than twenty years, submitted a statement vouching for his strong moral character, integrity, good judgment, and reliability. (AX D at 4-5)

Applicant hired and was evaluated by a clinical and research psychologist with experience evaluating and treating individuals for sexual problems, specializing in sexual offenses and sexual addiction or compulsivity. The psychologist noted that Applicant has dealt with traumatic brain injury and post-traumatic stress disorder since 2003. He observed that Applicant is uncomfortable with crowds and loud noises, and that he has a history of depression but is not currently experiencing significant symptoms. His diagnosis is that Applicant has never historically or currently had any diagnosable sexual disorders. His prognosis is that Applicant is not likely to return to engaging in illegal sexual behavior. (AX E)

## 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.” *Id.* 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.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, 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.” Exec. Or. 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. *See Egan* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” *See* ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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. See 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 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.

## **Analysis**

### **Guideline J, Criminal Conduct**

The concern under this guideline is set out in AG ¶ 30: “Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.”

Applicant admitted that he was reprimanded by his commander for having an extramarital affair and consorting with prostitutes. There is no evidence in the record reflecting that prostitution was illegal in the two foreign countries where Applicant engaged in prostitution. Similarly, there is no evidence in the record that the “happy ending” was illegal in the state where it occurred. Even though Department Counsel submitted no evidence of any criminal laws that were violated by his conduct, Applicant admitted that he was guilty of criminal conduct.

Applicant was arrested on May 6, 2017, and charged with (1) strangulation in the second degree, a felony; (2) criminal obstruction of breathing, a misdemeanor; and (3) assault in the third degree with intent to cause physical injury, a misdemeanor. Although Applicant denied committing the offenses, he admitted that he was arrested.

Applicant admitted having an extramarital affair and consorting with prostitutes while assigned overseas and that his conduct was illegal. He also admitted trying to quell a fight between two women, but denied the criminal acts that were alleged. He admitted receiving a “happy ending” after receiving a massage in 2018. His admissions are sufficient to establish the allegations in SOR ¶¶ 1.a-1.c and the following disqualifying condition:

AG ¶ 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The following mitigating conditions are potentially relevant:

AG ¶ 32(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;

AG ¶ 32(c): no reliable evidence to support that the individual committed the offense; and

AG ¶ 32(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.

AG ¶¶ 32(a) and 32(c) are established for the conduct alleged in SOR ¶ 1.a. The incident in the hotel brawl occurred more than seven years ago. It was a bizarre situation that is not likely to recur. Applicant was accused of this misconduct by two heavily intoxicated women. Woman A has recanted her accusation. The case lingered through seven hearings and finally was dismissed on multiple grounds, including lack of evidence. (GX 6 at 4)

AG ¶ 32(d) is not established. Applicant has not repeated the criminal activity alleged in SOR ¶¶ 1.a-1.c, but his lack of candor during the adjudication of his application for a security clearance (discussed below under Guideline E) undermines a finding of rehabilitation.

#### **Guideline D, Sexual Behavior.**

SOR ¶ 2.a cross-alleges the conduct alleged in SOR ¶¶ 1.a-1.c as sexual behavior under this guideline. 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. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

The following disqualifying conditions under this guideline are relevant:

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

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.

Applicant admitted that his consorting with prostitutes and receiving a sexual massage violated criminal statutes. His admissions are sufficient to establish behavior that made him vulnerable to coercion, exploitation or duress and reflect a lack of discretion and good judgment. I conclude that AG ¶¶ 13(a), 13(c), and 13(d) are established.

The following mitigating condition is potentially applicable:

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.

AG ¶ 14(b) is established. Applicant's most recent sexual incident alleged in the SOR occurred in 2018, about six years ago, and it has not recurred. He has been evaluated by a clinical psychologist with experience in treating sexual addiction or compulsivity, and he received a favorable prognosis.

### **Guideline E, Personal Conduct**

SOR ¶¶ 3.a cross-alleges the conduct alleged in SOR ¶¶ 1.a-1.c as personal conduct under this guideline. SOR ¶¶ 3.b-3.f allege that Applicant falsified material facts during a polygraph examination in February 2017, in an SCA submitted in October 2018, during a security interview in February 2019, in a SCA submitted in April 2020, and during a polygraph interview in November 2020, by failing to disclose the "full extent" of the criminal conduct alleged in SOR ¶ 1.a.

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

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

The following disqualifying conditions are potentially applicable:

AG ¶16(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;

AG ¶16(b): deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

AG ¶ 16(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; and

AG ¶ 16(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 . . . :engaging in activities which, if known, could affect the person's personal, professional, or community standing.

When a falsification allegation is controverted, as in this case, 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. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

SOR ¶ 3.a, cross-alleging the criminal conduct alleged in SOR ¶ 1.a-1.c, is established. The bizarre circumstances, in which Applicant, separated from his wife but not divorced, spent a night bar hopping and, while somewhat intoxicated, shared a bed with two heavily intoxicated women and then attempted to stop a fight between the two women instead of leaving the room or summoning law enforcement personnel, raises serious questions about his judgment which are sufficient to establish AG ¶ 16(c) and 16(e). His responses at the hearing focused on refuting his guilt of the criminal charges and did not adequately address his bad judgment in putting himself in a bizarre, uncontrollable, and embarrassing situation. His involvement with prostitutes on multiple occasions and receiving a sexual massage in 2018 are also sufficient to establish AG ¶ 16(c) and 16(e).

SOR ¶ 3.b, alleging falsification during a polygraph examination in February 2017 is established. Applicant denied this allegation in his answer to the SOR. However, he did

not submit any evidence at the hearing disputing it. His only comment in his answer to the SOR was “my statements were misstatements.”

SOR ¶¶ 3.c and 3.e, alleging falsifications of the October 2018 SCA and April 2020 SCA by failing to disclose the full extent of his criminal conduct, are not established. The purpose of the SCA is to discover potential disqualifying conduct that may require further investigation. An Applicant is required to disclose sufficient information to enable further investigation. He or she is not required recite all the details of an incident, especially if the details are disputed. Applicant disclosed the date and place of the incident, recited the general circumstances leading up to his arrest, and the disposition of the charges, which was sufficient information to enable security investigators to further investigate the incident.

SOR ¶ 3.d, alleging that Applicant did not disclose the “full extent” of his criminal conduct during a security interview in February 2019, is not established. The SOR does not allege what material facts were not disclosed. The investigator’s summary does not reflect what questions he asked. Applicant told the investigator that he did not recall the specific charges against him. This statement is consistent with Applicant’s testimony at the hearing that the judge “read off a whole bunch of charges and stuff.” The evidence does not establish any intentional and material omissions.

SOR ¶ 3.f, alleging that Applicant did not disclose the full extent of his criminal conduct during a polygraph interview in November 2020 is not established. The information in the examiner’s report is generally consistent with Applicant’s testimony at the hearing. Applicant has consistently denied that he assaulted the women or used excessive force to subdue them. His refusal to admit the criminal conduct alleged in SOR ¶ 1.a does not amount to falsifying material facts during the interview.

AG ¶ 16(b) is established for the allegation in SOR ¶ 3.b. It is not established for the allegations in SOR ¶ 3.c-3.f.

The following mitigating conditions are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(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;

AG ¶¶ 17(a) and 17(c) are not established for Applicant’s falsification during a polygraph examination in February 2017. He did not correct his omission until a subsequent polygraph examination in November 2020. His excuse that he had forgotten about the additional incidents with prostitutes is not credible. His only justification in his

answer to the SOR was, “my statements were misstatements.” His falsification was not minor. Falsification during the adjudication of a security clearance application “strikes at the heart of the security clearance process.” ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.)

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. 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 J, D, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant’s military service, including his service in a combat zone, and his service-related disabilities. I have considered the testimonials to his strong moral character, integrity, good judgment, and reliability. After weighing the disqualifying and mitigating conditions under Guidelines J, D, and E and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his sexual behavior, but he has not mitigated the security concerns raised by his criminal conduct and personal conduct.

### **Formal Findings**

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

Paragraph 1, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c (2018 incident):	Against Applicant
Subparagraph 1.c (2020 incident):	For Applicant

Paragraph 2, Guideline D (Sexual Behavior):	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a, cross-alleging ¶¶ 1.a-1.c:	Against Applicant
Subparagraph 3.b:	Against Applicant
Subparagraphs 3.c-3.f:	For Applicant

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge