



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



In the matter of:)	
)	
XXXXXXXXXXXXXXXXXX)	ISCR Case No. 24-00501
)	
Applicant for Security Clearance)	

Appearances

For Government: Troy Nussbaum, Esq., Department Counsel
For Applicant: *Pro se*

11/25/2024

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant failed to provide evidence sufficient to mitigate the national security concern arising from his personal conduct. Applicant’s eligibility for access to classified information is denied.

Statement of the Current Case

Applicant submitted his security clearance application (SCA) on July 5, 2023. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on April 11, 2024, detailing security concerns under Guideline E, personal conduct. The DOD 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.

On April 29, 2024, Applicant submitted an answer to the SOR (Answer) and elected a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) in lieu of a hearing. On June 12, 2024,

Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. DOHA sent the FORM to Applicant on the same day, and he received it on June 19, 2024. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. He responded to the FORM on July 10, 2024 (Response). The SOR and the Answer (Items 1 and 2, respectively) are the pleadings in the case. Items 3 through 6 and the Response are admitted without objection. The case was assigned to me on September 4, 2024.

Prior Procedural History

The current case was granted reapplication following a hearing and a Decision denying Applicant's security clearance on January 8, 2020. ISCR Case No. 19-00065 (AJ Jan. 08, 2020) (the 2020 Case or the 2020 Decision). (Item 6 at 1.) Because the 2020 Decision is necessary for the resolution of the current case, this **Prior Procedural History** is incorporated herein as findings of fact in the current case. In the 2020 Case, the SOR alleged under Guideline D that from about 2012 to 2014, while granted access to classified information, Applicant solicited prostitutes approximately six times. The 2020 Case repleaded those allegations under Guideline E. (Item 5 at 15.) He admitted those allegations. (Item 6 at 2.)

Under Guideline D, the 2020 Decision held: "More time must pass without actions of security concern before reinstatement of his security clearance will be warranted. Guideline D security concerns are not mitigated at this time." (Item 6 at 11.)

Under Guideline E, the 2020 Decision relied on the analysis of Guideline D. In addressing the seven potentially mitigating factors under Guideline E, it held:

Applicant's delay [until 2017] in reporting his involvement with prostitutes to AGA violates security and mission rules. As discussed in the previous section [sexual behavior], Applicant did not want information about his involvement with prostitutes to be disclosed to his spouse and children. None of the mitigating conditions fully apply to Applicant's conduct as described in the sexual behavior section, *supra*. Personal security concerns are not mitigated at this time." (Item 6 at 12.)

Under the whole-person concept, the 2020 Decision held: "Unmitigated sexual and personal conduct security concerns lead me to conclude that the grant of a security clearance to Applicant is not warranted at this time." (Item 6 at 14.)

Findings of Fact

In the current case, under Guideline E the SOR alleged that from about 2012 to 2014, Applicant solicited prostitutes five or six times and that his family was unaware of this behavior. (Item 1.) He admitted those allegations. Unlike the 2020 Decision, there were no Guideline D allegations. (Item 2.) The following four documents were

attachments to his Answer, which have been admitted and are, therefore, part of the record:

- A. Item 6;
- B. Item 3;
- C. Item 2;
- D. Item 4.

The following findings of fact are taken from the 2020 Decision. These were made after a full hearing and the admission of both parties' proffered exhibits without objection. Citations to the Transcript and Exhibits in the 2020 Decision have been omitted.

Applicant is a **63** year-old senior engineer, who has been employed by his current employer for **23** years. He held a security clearance with access to sensitive compartmented information (SCI) from 1986 to 2017. He believes that if his security clearance is reinstated he will be able to assist with problem-solving in the intelligence community. He will be able to make important contributions to national security. He has been married for **34** years. He has three **adult** children. [Note: Bold type in this paragraph indicates the facts changed by the passage of time since the 2020 Decision.]

In 1985, Applicant received a bachelor's degree in electrical engineering. He received one master's degree in electrical engineering and computer engineering, and a second master's degree in networks and computer security.

Sexual Behavior and Personal Conduct

In the 2020 Decision, the sexual behavior and personal conduct findings of fact were intertwined and, therefore, were stated together and are repeated here.

Applicant had a lengthy career performing numerous high-risk missions acting in a covert capacity on behalf of a non-DOD agency, which will be referred to as another government agency (AGA). While on close-contact sensitive classified missions outside the United States on behalf of an AGA, Applicant befriended and deceived foreign nationals and U.S. citizens. He was successful at exploiting others in support of the mission. Applicant believed he was not psychologically equipped or trained for such missions. He was psychologically "over his head" because of the circumstances of the missions. He was taking AndroGel, a medication which increased his libido and aggressiveness, and he believed, AndroGel adversely affected or contributed to his decisions to seek sexual release from prostitutes. AndroGel was part of his high-dosage testosterone therapy and was prescribed by his physician. His dose of AndroGel was reduced by half after his last involvement with a prostitute in 2014. His medication does not currently affect his judgment.

From 2012 to 2014, Applicant held a security clearance with access to SCI. Applicant engaged in sexual intercourse with the prostitutes while he was on solo missions without proper psychological support. He was "embedding himself into

organizations and getting to know people and deceiving them.” (He did not have anyone on his team to address his concerns and issues. He described his behavior with prostitutes as a “catastrophic personal failure” and as “totally unacceptable.” 33, 58) He did not engage in sexual activity with prostitutes before 2012 or after 2014.

The prostitutes in the foreign country worked in licensed bordellos, and Applicant’s engaging in sex with them for money was not a crime. He did not consume alcohol before going to the bordellos. He went to different bordellos sometimes in different cities. The AGA knew what city Applicant was located in; however, the AGA did not know when he went to a bordello. Applicant paid the prostitutes with cash, and the prostitutes did not know his name. He believed he paid about \$100 each time. He did not bring identification documents to the bordello. He engaged in sexual intercourse with the prostitutes in the bordello, and he used a condom. He assumed the women in the bordello were old enough to be legally authorized to engage in such conduct in the foreign country where he engaged in sex with them. He suggested that the bordello would not be licensed by the foreign government without ensuring the women engaging in sex were not minors. He did not know the nationality of the prostitutes. He described the sex with the prostitutes as “the release to keep myself sane” and to maintain his “balance.”

When Applicant was on an overseas mission, he maintained security. He conceded his conduct with prostitutes while on a mission was “extremely risky.” He denied that he engaged in any conversation with the prostitutes. He said:

I talk to no one. There’s no reason to talk to anyone. Everyone’s a threat. Any conversation with anyone – in the plane on the street – it all represents a threat. There’s no reason to talk to anybody about anything. I mean, when I was doing these things, I was completely isolated socially, other than the people that I was deceiving --

Again, for each one of these missions, it was isolation. Again, everyone represents a threat. Every person. It’s just the shopkeeper. There’s no sense in engaging in conversations with anyone. You engage in a conversation with someone normally, and then all of a sudden it’s, well, why are you here? And then, what are you doing? Or, what’s the nature of your business? And there’s no good that comes from any of those conversations.

Applicant conceded at his hearing, “I admit fully, without reservation, that I put myself at risk, I put the mission at risk, and it was wrong.” (Tr. 62) His missions on behalf of the AGA were successfully accomplished notwithstanding Applicant’s involvement with prostitutes.

Applicant was supposed to report to the AGA occasions when he was stopped or detained going to or exiting a place or any problems. He disclosed operational errors because they put the mission and lives at risk. The first time Applicant disclosed his involvement with prostitutes was in May 2017 before he took an AGA polygraph test. He

believes he passed the polygraph test administered after his disclosures about his involvement with prostitutes. He said he did not disclose his involvement with prostitutes before 2017 because at the time of the conduct he perceived it was not wrong to patronize prostitutes while on a mission, and from 2014 to 2017, he suppressed the information. Patronizing prostitutes was legal and accepted in that country. He said, "I buried stuff that I did, and this all fell in that same category." He further explained, "I buried it, along with all the other things that I did to survive." He put the information away, and then he forgot about it. In June 2017, AGA revoked Applicant's SCI access because of his involvement with prostitutes from 2012 to 2014. AGA cited the repeated acts of engaging in sex with prostitutes over several years, and noted it was "even more of a concern that he was engaging in prostitution in a foreign country while assigned there for employment with the U.S. Government." In September 2017, Applicant's first appeal of the revocation of his SCI access was denied. In December 2017, the AGA decision to revoke his SCI access was final.

During Applicant's involvement with prostitutes, he was unaware of the prohibitions against supporting human trafficking through providing financial support to entities engaged in prostitution. The Trafficking Victims Protection Act (TVPA) of 2000 is a federal law addressing trafficking in persons. The TVPA prohibits trafficking related-conduct, including patronizing, or soliciting of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age. See 22 U.S.C. § 7101 et seq. Extraterritorial jurisdiction does not apply to Applicant's conduct because it occurred outside of the United States, and the other statutory exceptions establishing extraterritorial jurisdiction in the TVPA do not apply in this case. See Caroline A Fish, Extraterritorial Human Trafficking Prosecutions: Eliminating Zones of Impunity Within the Limits of International Law and Due Process, *St. John's L. Rev.* Vol. 91, No. 2, (Jan. 2018). AGA's policies against human trafficking from 2012 to 2014 are not part of the file.

At the time he engaged in solicitation or patronization of prostitutes outside the United States, Applicant did not know whether the women were coerced or fraudulently induced to engage in prostitution at the bordellos. The women could have been from Russia or other nations of heightened security concern. Applicant was not fluent in the language of the country where the mission occurred, and persons in the bordello may have realized he was an American. The training that he received on human trafficking was perfunctory "check the box, answer the question," and it was not sufficient to cause Applicant to think about the law or prohibitions against trafficking before he engaged in sexual intercourse with prostitutes.

After his security clearance was revoked, Applicant received psychological counseling for three sessions from an AGA-cleared psychologist. He needed counseling to cope with the years of AGA-authorized lying to complete AGA missions. He decided that he could not engage in future missions involving deception. He accepted responsibility for his "catastrophic moral failure" and "catastrophic mistake" relating to his sexual intercourse with prostitutes.

Applicant's spouse has been employed by AGA since 1986, and she is aware his security clearance was revoked. She did not ask, and he did not tell her the reason his security clearance was revoked. He did not want anyone who is close to him to know about his patronization of prostitutes because he is embarrassed about his behavior. He conceded he has a personal and professional interest in keeping his involvement with prostitutes a secret. If someone attempted to use his involvement with prostitutes to coerce or extort classified information from him, he would inform security, law enforcement, and his spouse about his involvement with prostitutes.

In sum, Applicant promised that he would not behave in the manner alleged in the SOR in the future. He will not be exposed to the pressure of using deception and ingratiating himself with others in a covert role because he will not return to employment involving his covert-intelligence activity. He requested reinstatement of his security clearance out of a sense of duty and patriotism. He has the skills and ability to contribute to national security, and he wanted to use those skills to benefit the United States.

Character Evidence

Applicant has more than 30 years of employment in the intelligence sector. In 1996, he received letters of commendation from President Clinton, the Director of AGA, and the Deputy Director of AGA. He received a citation for a complex collection operation in 1995, and he was praised for his courage, attention to detail, and technical expertise in a field operation. In 1997, Applicant received a commendation from the Director of AGA. In 1997 and 1998, he received Certificates of Distinction from AGA. He also received some classified awards.

Aside from his activities with prostitutes from 2012 to 2014, Applicant had a flawless record. He accepted numerous missions which entailed a risk of capture and death. The circumstances of his life from 2012 to 2014 were anomalous and will not recur, and he will not be involved with prostitutes in the future. He never improperly disclosed classified information. He described himself as an honest, trustworthy person, and he noted that he has previously reported security-related incidents or mistakes. His loyalty and dedication to the United States are impeccable.

Thus ends the Findings of Fact taken from the 2020 Decision.

Findings of Fact in the Current Case

Applicant notes that seven years has elapsed from when he first reported his involvement with prostitutes to AGA, and ten years has elapsed since his last involvement with prostitutes. In those interim years, there have been no actions of security concerns involving him. (Item 2 at 1, 3, 26, and 29.) Applicant has been employed by his current employer since July 2000. (Item 3.)

Applicant verified his October 16, 2023 personal subject interview (PSI) on March 25, 2024, noting that “the essential material details are correct” and noted that some “details and timelines are incorrect.” The following details and corrections are noted.

First, his wife **and one of his sons** are both cleared employees and have never asked the reason why his clearance was revoked. They believe they are for personal reasons. He stated that if they asked he would tell them the reason why. He does not believe there is any reason to tell his wife about the prostitutes because it would hurt her, and that is not his goal. (Bold indicates new facts.) (Item 4 at 4.)

Second, his PSI summary said Applicant is an engineer and was involved in tasks that **he had to lie to case officers** and involved a lot of deception and lying to foreign nationals and others because it was necessary to accomplish their cleared mission objectives. He corrected that: “**I never [had] to lie to case officers**; I was placed in situations where Case Officers made mistakes that could have compromised the mission, so I lied to foreign national[s] and others FOR the Case Officers to protect the mission.” (Upper Case in original.) (Bold indicates the passage and the correction.) (Item 4 at 4, 6.)

Third, his PSI summary said Applicant **failed a polygraph and believed it was after 2019**. He corrected that:

[I] disclosed the full details of my personal behaviors when I disclosed same on a polygraph to an IC Agency back **in the 2017 timeframe**. To be more accurate, **I do not believe I ‘failed’ the polygraph**. Rather, when I could no longer compartmentalize and ignore my catastrophic personal behavior, I disclosed the behavior as required. I used the ‘failed’ in the interview to reflect my personal failure. I have never lied or deceived a USG Security Officer; hence I do not believe I ‘failed’ the polygraph, as I have always told the truth on a polygraph.” (Item 4 at 4,6.) (Bold indicates the passages and the correction.)

In his responses to interrogatories, Applicant identified individuals he told about his soliciting of prostitutes. They are two of his employer’s staff security officers, his personal attorney, and various IC (Intelligence Community) or DOD investigators (names not recalled). He did not identify his son or his spouse, both of whom are cleared employees. He was asked why he has chosen not to inform his wife. He answered: “I have not disclosed my catastrophic personal behavior to my wife to avoid the emotional harm it would cause her.” (Item 4 at 9-10.)

The interrogatories asked Applicant under what circumstances he would inform his wife. He responded as follows:

If any attempt were made to blackmail or compromise me, . . . I would immediately . . . take the following steps:

- If I were still employed, I would immediately contact my Staff Security Officers;
- If that avenue were unavailable to me, I would then immediately contact the first IC Agency that cleared me back in 1986, as I have their emergency telephone number memorized;
- If that avenue were unavailable to me, I would then contact the nearest office of the Federal Bureau of Investigation and ask to meet immediately with a Special Agent.

After contacting the appropriate USG Agency, **I would then immediately and without the slightest hesitation disclose to my wife that an attempt was being made to blackmail or compromise me based on surrounding the revocation of my clearances.** I would answer any and all questions she would have.

My wife, who is a cleared employee, would then be obligated to contact her USG Agency Staff Security Officers to inform them of the situation.

The above action plan is in effect now, and will always be in effect, even if I no longer hold a security clearance. (Emphasis in original.) (Item 4 at 10.)

The following is from Applicant's Answer:

I voluntarily sought out a cleared government psychologist. I came to understand that the required practice of meeting individuals, befriending them, only to exploit them was in violent opposition to my core beliefs of honesty and trustworthiness. I also learned I had compartment [sic] these feelings and forget what I had done for the mission as a coping mechanism. I have confronted and deeply examined my inappropriate behavior to determine what went wrong and what lead to my catastrophic personal failures. I have been off the prescription medication that I [sic] was a contributing factor to the inappropriate behaviors I committed. I have taken the above positive steps, and I also know that, should I be granted a security clearance, I can never again accept any tasking that would involve deception and the exploitation of individuals, as these stressors and factors I am not able to handle emotionally or psychologically. (Item 2 at 26.)

Applicant submitted his Overall Assessments/Performance Summaries from his employer for the years 2021, 2022, and 2023. (Item 2 at 31-35.) They are summarized below.

2021: The year 2021 unfolded many challenges. Applicant had to dedicate himself to be in a position to help the company to deliver. He supported revenue from the pre-sales and post-sales perspective, often going above and beyond on activities. He had to step in and become the chief engineer to help the company achieve a successful

implementation. His role shifted to being in being in multiple technical briefings, leveraging his system engineering background and providing input to the implementation teams. His contributions were fundamental to the program to move forward and be in a position of success. 2021 was a year with challenges, but we are glad to see Applicant rising to the occasion, adapting to the needs of the business, and delivering consistent performance to help succeed.

2022: Applicant is a change agent, always looking for opportunities to improve our solutions and the company position needed to meet the needs of customers and the market. He is a critical thinker that doesn't just accept the status quo. He analyzes information and provides input when he believes we need to go in the right direction. This trait is necessary and encouraged as we need engineers like him to help us improve this place. I extend my most heartfelt gratitude for Applicant's outstanding work in 2022. His dedication and hard work have been instrumental in our quest to move the company forward, for which I am genuinely grateful to have you as part of the team. Keep up the fantastic work.

2023: Applicant has demonstrated technical excellence and proven to be an indispensable asset to our organization through his exceptional dedication to advancing our business. His remarkable ability to seamlessly blend his engineering prowess with a strategic mindset sets him apart as a true trailblazer. In summary, Applicant has been a driving force behind our achievements this year, and his impact on our business is immeasurable. As we reflect on the past year, it's evident that his contributions have elevated our engineering capabilities and played a pivotal role in shaping our strategic direction. I want to express sincere appreciation for his exceptional work and dedication. We look forward to another year of collaboration and success with Applicant as an integral part of our team.

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 E - Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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

AG ¶ 16 includes two conditions that could raise a security concern and may be disqualifying include:

(c) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, 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

(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.

In the current case, SOR ¶ 1 alleged and Applicant admitted that from about 2012 to 2014, he solicited prostitutes five or six times and that his family is unaware of this behavior. AG ¶¶ 16(c) and 16(e) are established.

AG ¶ 17 provides the following seven conditions that could mitigate security concerns in this case:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of

authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

The 2020 Decision dealt with the foregoing seven mitigating conditions in one paragraph:

Applicant's delay [until 2017] in reporting his involvement with prostitutes to AGA violates security and mission rules. As discussed in the previous section [sexual behavior], Applicant did not want information about his involvement with prostitutes to be disclosed to his spouse and children. None of the mitigating conditions fully apply to Applicant's conduct as described in the sexual behavior section, *supra*. Personal conduct security concerns are not mitigated at this time.

AG ¶ 17(a). From this excerpt, it is clear the 2020 Decision focused principally on condition AG ¶ 17(a) to assess mitigation under Guideline E, notably the delay between Applicant's last resort to a prostitute in 2014 and his reporting to AGA in 2017 of those extra-mission activities. At this point, it is worth reconsidering this condition and the other six conditions that were subsumed in the paragraph quoted above.

In the current case, Applicant pointed to his three psychological counseling sessions from an AGA-cleared psychologist. He said those sessions helped him understand that the deceit he was required to use in his covert mission "was in violent

opposition” to his core beliefs of honesty and trustworthiness. He learned to “compartment” and forget his feelings for what he had done as a coping mechanism. From 2014 to 2017, he suppressed the information. He said: “I buried it, along with all the other things that I did to survive.” He claimed this was a direct cause of his delay in reporting. On the eve of a polygraph in May 2017, he disclosed for the first time his involvement with prostitutes. He believes he passed the polygraph. He also explained that a medically prescribed testosterone drug contributed to his forays with prostitutes. His dosage was reduced by half, and he now no longer takes that medication.

Applicant’s first disclosure of his use of prostitutes was on the eve of a polygraph in 2017. Therefore, that undercuts his psychological explanation. To a non-expert in psychology, however, his is a plausible explanation. But Applicant asks these three psychological exams to carry great weight in this case. The word “prompt” coupled with the three-year delay in reporting carry their own considerable weight. The mere passage of time cannot lighten that weight. It would have been helpful had he been able to submit a written report from his psychologist supporting Applicant’s lay explanation. I find that his report in 2017 was not prompt as contemplated by AG ¶ 17(a).

In AG ¶ 17(b) the operative words are: “[W]as caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual **specifically concerning the security clearance process.**” (Emphasis added.) This condition deals with situations where an applicant has acted on poor advice about the security clearance process. Applicant contends that this condition has been satisfied. But he has held security clearances from 1986 to 2017 and has never claimed that his sessions with prostitutes were influenced by poor advice he received about the security clearance process. I find that this mitigating condition does not apply here.

AG ¶ 17(c) raises a number of independent factors to be analyzed and is, therefore, reiterated here: “[T]he 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.”

The offense was so minor. The 2020 Decision made it clear that Applicant committed no crime in the U.S. or in the country in question. “Extraterritorial jurisdiction does not apply to Applicant’s conduct because it occurred outside of the United States, and the other statutory exceptions establishing extraterritorial jurisdiction in the Trafficking Victims Protection Act (TVPA) do not apply in this case.” *See supra* at 5. Although there was no crime involved, the security breach, however, was significant. This element of AG ¶ 17(c) does not apply.

“So much time has passed.” Applicant’s endeavors with prostitutes occurred between 2012 and 2014, or between 10 to 12 years ago. He reported his use of prostitutes to an AGA in 2017. The discussion below of the infrequency of his conduct and its uniqueness satisfies this element of AG ¶ 17(c).

“The behavior is so infrequent.” Applicant is 63 years old and has been married for 34 years. He has three grown children. He earned a bachelor’s degree in electrical engineering in 1985 and later master’s degrees in electrical and computer engineering and networks and computer security.

Applicant’s professional career began in 2000 with his current employer. During his tenure, he has held a security clearance with SCI access from 1986 to 2017. He has embarked on numerous missions that carried the risk of capture and death. The mission that is the subject here was such a mission. His 2021, 2022, and 2023, employer evaluations show that he continues to be held in high regard by his company. His character evidence in the 2020 Decision was stellar. *See supra* at 6.

Applicant’s two years of off-mission activities with prostitutes was a serious breach of good judgment. And it was rightfully treated as such. The 2020 Decision found as a fact that those two years were anomalous. Given his personal life and his lengthy and highly regarded 30-year professional career, I find that Applicant’s behavior was infrequent under AG ¶ 17(c).

“It happened under such unique circumstances that it is unlikely to recur” Before the incidents in question, Applicant accepted numerous missions that entailed a risk of capture and death. Thus, this particular mission was not professionally unique to him. There were, however, other forces at work here. First, he was being treated with a prescribed testosterone medication that enhanced his libido. The dosage was reduced by half but only after this mission was successfully accomplished. (He has since discontinued it.) Second, his mission was covert and required for its success that he embed himself in organizations and befriend and then deceive foreign nationals and U.S. citizens. He described being “completely isolated socially, other than the people I was deceiving.” Third, he discovered, in counseling, that his many AGA covert missions required him to use deceit and dishonesty that was “was in violent opposition” to his core beliefs of honesty and trustworthiness. He resorted to prostitutes for release from the pressures of this particular mission.

Applicant learned that he needed psychological counseling after years of AGA-authorized lying and deceit to complete AGA missions. He voluntarily sought out such counseling. He vowed that in the future, he would not be exposed to the pressure of using deception with others, because he will not return to employment in covert intelligence. In his 30 years of commendable service, his activities from 2012 to 2014 were anomalous. Thus, the current circumstances or instances like them are unlikely to recur. Applicant has repeatedly admitted that his use of prostitutes was wrong and will not recur. I find that the circumstances were unique and that Applicant’s overall history of reliability, trustworthiness, and good judgment has been mitigated under AG ¶ 17 (c).

AG ¶¶ 17(d) and (e) ask whether the individual has acknowledged the behavior, taken counseling, and has taken positive steps to eliminate vulnerability to duress. As discussed above, Applicant acknowledged his behavior, has voluntarily taken counseling,

stopped the contributing medication, and asserted that he will not return to covert intelligence activities that put him at risk emotionally and psychologically. These elements of AG ¶¶ 17(d) and (e) apply.

AG ¶ 17(f) *does not apply*. Applicant himself is the source of the information that threatened his clearance. Clearly, the Government found him to be a reliable source for that information.

AG ¶ 17(g) *does not apply*. The 2020 Decision found that Applicant's liaisons with prostitutes in the country in question was not illegal.

Relevant Caselaw

The foregoing factorial analysis of AG ¶ 17 leads to a positive outcome for Applicant. That analysis, however, does not end the inquiry. The DOHA Appeal Board contributes valuable fact-specific decisions that must be consulted as an integral part of administrative judges' decision-making process. For example, in a recent decision, the Appeal Board held that an applicant's sexual affair that happened twice 17 years ago which he hid from his wife and children created an "ongoing vulnerability to coercion or exploitation." ISCR Case No. 22-01002 at 3, 5 (App. Bd. Sept. 26, 2024). Similarly, in another case, the applicant used the services of prostitutes 27 times over 5 years, but he hid this from his spouse and children. The Appeal Board held that in doing so he remained subject to coercion. ISCR Case No. 05685 at 3 (App. Bd. July 12, 2013). The Appeal Board has a long history of denying clearances in cases where applicants have kept their sexual ventures hidden from their spouses. See, e.g., ISCR Case No. 02-00578 at 3 (App. Bd. Apr. 6, 2004) (failure to inform family about extramarital affairs and prostitution activity left the applicant vulnerable to blackmail). This caselaw is abundantly clear that Applicant's understandable unwillingness to disclose to his spouse his use of prostitutes 10 years ago is incompatible with holding a security clearance.

Applicant's Action Plan

The following is Applicant's Action Plan, if any attempt were made to blackmail or compromise him:

- If I were still employed, I would immediately contact my Staff Security Officers;
- If that avenue were unavailable to me, I would then immediately contact the first IC Agency that cleared me back in 1986, as I have their emergency telephone number memorized;
- If that avenue were unavailable to me, I would then contact the nearest office of the Federal Bureau of Investigation and ask to meet immediately with a Special Agent.

After contacting the appropriate USG Agency, I would then immediately and without the slightest hesitation disclose to my wife that an attempt was being made to blackmail or compromise me based on surrounding the revocation of my clearances. I would answer any and all questions she would have.

In effect, Applicant is suggesting that a DOHA administrative judge issue a conditional security clearance. That is, issue an order granting a security clearance subject to the foregoing conditions. The current Directive, Security Executive Agent Directive (SEAD) 4, Appendix C, may address that remedy, but at this point, DOD has not yet issued an implementing guidance for that SEAD. Thus, we are unable to grant a conditional clearance. See ISCR Case No. 02-00578 at 3 (App. Bd. Apr. 6, 2004) (no authority to grant probationary or conditional security clearances), *citing* ISCR Case No. 99-0109 at 3 (App. Bd. Mar. 1, 2000).

The Whole-Person Concept

Under AG ¶ 2(a), 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) 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 questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has not provided sufficient evidence to mitigate the security concerns arising under Guideline E, personal conduct. I find against Applicant on SOR ¶ 1.

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 E:	AGAINST APPLICANT
Subparagraphs 1.a. – 1.b.:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge

