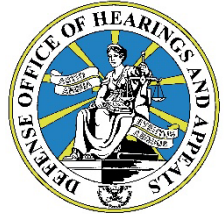




**DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 24-01919
)
Applicant for Security Clearance)

Appearances

For Government: Lauren Shure, Esq., Department Counsel
For Applicant: Sean Rogers, Esq.

09/03/2026

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant mitigated the criminal conduct security concerns but did not mitigate the sexual behavior security concerns. The Government did not establish personal conduct security concerns distinct from those found sufficient under a different adjudicative guideline. Eligibility for access to classified information is denied.

Statement of the Case

On March 6, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline D (Sexual Behavior), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct). The DCSA acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented on June 8, 2017.

In Applicant's June 18, 2025 response to the SOR (Answer), he denied all of the allegations. He did not attach any documentary evidence, and he requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. (Answer)

On July 2, 2025, the Government was ready to proceed to a hearing. I was assigned this case on December 17, 2025. On January 14, 2026, DOHA issued a notice scheduling the hearing for March 2, 2026. The hearing proceeded as scheduled. The Government proffered four evidentiary exhibits, which I admitted as Government Exhibits (GE) 1 through 4, without objection. Applicant and one witness testified. Applicant submitted nine evidentiary exhibits, which I admitted as Applicant Exhibits (AE) A through I, without objection. DOHA received the hearing transcript (Tr.) on March 10, 2026.

Findings of Fact

Applicant is 40 years old. He graduated from high school in May 2003. He earned a bachelor's degree in August 2007, an associate degree in November 2014, and a master's degree in March 2023. He has also earned several information technology (IT) certifications. He has never married and does not have any children. Since November 2021, he has been employed as a software engineer with a federal contractor, and he maintains top secret clearance eligibility. (GE 1 at 14-15, 25-26, 28; AE A at 2; AE B; AE C; AE F; Tr. 29, 35, 37, 39, 44, 81-82, 94)

The SOR alleges security concerns under Guidelines D, E, and J arising from sexual encounters with women both overseas and in the United States between about January 2015 and August 2018. These interactions included sexual activity with Applicant and monies given by Applicant to most, if not all, of these women. The nature of these relationships, whether these contacts constituted high-risk or criminal sexual behavior, and whether this information may be a source of influence or coercion as to Applicant's personal and professional standing are the overlapping issues in this case.

Applicant first disclosed the information about these encounters during a March 4, 2021 post-polygraph examination interview conducted by another government agency (AGA). On February 7, 2022, AGA issued a Clearance Decision Statement (CDS) denying Applicant access to sensitive compartmented information (SCI) due to sexual behavior and criminal conduct security concerns. Relying upon the AGA post-examination interview (AGA Interview Summary), AGA concluded that Applicant had solicited prostitutes while he held SCI access with AGA and the Navy, had two women in his hotel room in the Philippines in violation of military orders, and had not been forthcoming about the information with an AGA representative. (GE 2 at 3-8)

On April 19, 2022, Applicant appealed the denial of SCI access, and he denied any solicitation of prostitution or the exchange of money for sexual acts (AGA Appeal). On October 27, 2022, AGA sustained the CDS denial of Applicant's SCI access and, in pertinent part, concluded:

I acknowledge that [Applicant] utilized massage parlors to alleviate his pain caused by the rigorous military training he endured. However, his engagement in prostitution also occurred at his residence, at hotels, and at the residence of the women he solicited. Additionally, [Applicant] engaged in this activity for approximately four years, and while he was SCI cleared

with the U.S. Government. Therefore, in accordance with the governing and relevant guidelines and standards, I have concluded that the denied decision is appropriate and do not find sufficient mitigating evidence in the appeal. (GE 3 at 69)

On February 23, 2023, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM), and he discussed each of the alleged encounters. The aforementioned materials, the hearing testimony, and the pleadings and documentary evidence submitted by the parties, frame the findings of facts.

From March 2013 to August 2021, Applicant served on active duty in the U.S. Navy, from which he received an honorable discharge. He was granted secret clearance eligibility in about January 2013 and top secret clearance eligibility with SCI access in February 2015. His first two years of military service included rigorous training first with the Defense Language Institute, from which he earned an associate degree in Mandarin Chinese. He then immediately transitioned to the demanding aircrew training, which required intensive physical training and Survival-Evasion-Resistance-Escape (SERE) training, including an interrogation evolution, to prepare for hostile or captive environments. The rigors of this training led to nagging injuries to his “feet, legs, knees, shoulders, neck, back, and occasionally his hips.” Applicant testified that he “could barely walk.” He did not seek out medical treatment for these injuries through Navy medical facilities due to concern that treatment or the disclosure of these injuries may interrupt or require him to restart training. In about December 2014, he completed his training and returned home for holiday leave prior to his assignment in State A. While home, he was gifted a visit or recommended to visit a massage parlor for treatment of his injuries. The masseuse recommended that he continue monthly massage treatments for his injuries. (GE 1 at 45-47; GE 2 at 3; GE 3 at 11, 40, 44, 46; AE A at 2-3, 5; Tr. 29, 35, 51-53, 112, 125, 130-131)

SOR ¶ 1.a. In January 2015, Applicant traveled to State A for his first assignment. After about two weeks, he visited a massage parlor about which he learned from other service members. According to the March 2021 AGA interview summary (AGA Interview Summary), Applicant selected this particular massage parlor because he had heard rumors that one could engage in sexual activity. The summary states that he received a massage and then engaged in sexual activity after his massage. He paid the masseuse and left. (GE 2)

In the February 2022 CDS, the AGA concluded that the conduct had occurred as represented in the AGA Interview Summary. (GE 2 at 4) In his April 2022 AGA Appeal, Applicant denied that he solicited prostitution or initiated any sexual activity with the masseuse in 2015. “He did not offer to tender her money for sex, nor did he pay for sex.” (GE 3 at 11)

During his February 2023 OPM interview, Applicant averred that he was the victim of a sexual assault by the masseuse during the January 2015 encounter. He stated that

he immediately left the business and did not report the incident. He denied paying any additional monies for sexual activity. (GE 4 at 5)

At the hearing, Applicant explained that he had only been stationed in State A for about two weeks when he followed the recommendation of the earlier masseuse and searched for a massage parlor. He was unaware, at the time, that the establishment he selected was in a less reputable area, but he admitted that he was aware of the possibility he may be sexually propositioned at the massage parlor. He denied initiating or soliciting any sexual activity and testified that he did not physically respond to the masseuse's attempts at arousal and moved his body away from her. He further claimed that he did not pay any more money than the posted price for a massage. He testified that he visited massage parlors while stationed at State A for three more years and never had a similar incident. He explained that he went to a massage parlor because he did not want to negatively impact his flight status by seeking treatment for his injuries through the Navy. (Tr. 50-56, 89-93)

SOR ¶ 1.b. While stationed in State A, Applicant was attached to other units and deployed overseas to the Pacific Region for weeks or months at a time. During 2016, he was deployed for approximately eight months in total. In 2016, he was in the Philippines on deployment for about two months, and he resided in a hotel. According to the AGA Interview Summary, his command had instructed that no guests or visitors were allowed in their quarters or hotel. The summary further states that Applicant met two women on foreign dating websites, brought these women into the hotel, engaged in sexual activity with both women, and gave at least one woman \$15 to \$20 after the interaction. (GE 2 at 4, TR. 59)

In the CDS, AGA concluded that the conduct had occurred as represented in the AGA Interview Summary. (GE 2 at 4) In his AGA Appeal, Applicant explained that he met both women through a "legitimate dating site" and that the rule against guests in quarters had been relaxed at the time he brought them into his hotel room. He explained that he engaged in some sexual activity with one woman and engaged in sexual intercourse with the second woman in his hotel room. He gave the first woman money for transportation and did not recall giving any money to the second woman. (GE 3 at 13)

During his 2023 OPM interview, Applicant explained that he met two local, Filipino women through the Asian equivalent of the Tinder app. He "probably gave these women a few dollars on occasions to pay for their cab fares to or from the dates." He denied that either woman was a prostitute and that he was prohibited from having them in his hotel room. He also explained that he resided at a private hotel with "robust security measures in place," where all guests were screened and their names recorded. (GE 4 at 6, 12)

At the hearing, Applicant admitted that he had met the two women through a dating application comparable to Tinder, posting that his goal was companionship but that he was "open to sex." He admitted that he had "very limited" sexual contact with one of the women and had sexual intercourse on two occasions with the second woman. He recalled giving the first woman "very insignificant money" (\$5 to \$10) for transportation from his

hotel to her residence. He denied that he had any discussion with either woman about the exchange of money for sex. He explained that they had been messaging for about two or three weeks before they met up. “[W]e had already established a foundational relationship at that point.” (Tr. 58-62, 94-97)

SOR ¶ 1.c. In late 2016, Applicant returned to State A, where he was stationed with the Navy. He met a local woman (H) through a dating application and messaged her through the application and then through texts. According to the AGA Interview Summary, Applicant went to H’s home, they engaged in sexual intercourse, and he paid her \$100. (GE 2 at 4)

In the CDS, AGA concluded that the conduct had occurred as represented in the AGA Interview Summary. In his AGA Appeal, Applicant explained that he and H engaged in an ongoing relationship for about eight months. On one planned date, when H had invited Applicant to get a massage because she had a coupon or gift certificate, Applicant missed the date due to car problems. Because H had both paid for the missed massage and helped Applicant get his car repaired, Applicant paid her \$100. During his February 2023 OPM interview, Applicant provided the same explanation as in his AGA Appeal. (GE 2 at 4; GE 3 at 12; GE 4 at 11)

At the hearing, Applicant testified that he returned to State A in December 2016, and he met H on a dating application or website and then met her in-person at a New Years Eve event. They knew each other for about eight months, and they had many conversations before they engaged in sexual activity. He reiterated that he missed a date with H due to car problems, and she had paid for the date. She had also helped him arrange for car repairs because she was a native of State A and he needed car repairs after normal business hours. He paid her \$100 as reimbursement for their non-refundable date and for her help with the car repairs. From the context of their excerpted text exchanges, they did not meet up nor have sexual intercourse on the evening of the cancelled date or when he gave her \$100. Rather, they had sexual intercourse about a month later. He denied they ever had any conversations about money for sex. He noted that she worked as a lawyer or child advocate for the court system. (Tr. 62-67, 99-102)

SOR ¶ 1.d. While in the Navy and in a position requiring access to SCI, Applicant vacationed in Thailand in about July 2018. According to the AGA Interview Summary, he met two women outside a restaurant or club. They visited nightclubs, danced, and ate meals. He brought both women to the hotel, and he engaged in sexual activity with both. One woman asked for money for transportation home, and Applicant gave her approximately \$40. He met the second woman the following night, they engaged in sex again, and she asked for money for transportation home. He gave her approximately \$30 to \$40. (GE 2 at 4)

In the CDS, the AGA concluded that the conduct had occurred as represented in the AGA Interview Summary. (GE 2 at 4) In his AGA Appeal, Applicant clarified that he engaged in minor sexual activity with one woman and had sexual intercourse with the

second woman. He averred that there was no discussion about money for sex. Rather, he provided taxi fares for the women “as a courtesy.” (GE 3 at 14)

At the hearing, Applicant described his contacts with the two Thai women. He met them outside an unnamed establishment, and they went to bars and had a “night out on the town,” spending many hours together. He liked one of the women, and her friend “tagged along.” They never discussed money or money in exchange for sexual activities. All three returned to Applicant’s hotel. He had sexual intercourse with one of the women that first night. He believes that he provided one or both women a small amount of money (\$30) with taxi fare. The following day, he spent the day with the woman he liked, visited scenic sites, shared meals, and she taught him some of the Thai language. He paid for their meals, drinks, and other expenses based on his own expectation of men on dates. They did have sexual intercourse on the second day; however, he did not give her any money in exchange for sex. He spent a third day in Thailand sightseeing and did not interact with either woman. (Tr. 68-73, 102-105)

Separate from his interactions with the two Thai women, and unalleged in the SOR, Applicant visited a massage parlor in Thailand in July 2018. He requested a regular massage with no expectation of any sexual activities. When the masseuse initiated sexual activities and he rejected the advances, she demanded more money. He paid an additional \$20 and immediately left the establishment. (GE 2 at 4; Tr. 103-104)

SOR ¶ 1.e. Based on the testimony and documentary evidence, this allegation alleges conduct identical to that in SOR ¶ 1.d. This allegation is found for Applicant.

SOR ¶ 1.f. While in the Navy and in a position requiring SCI access in support of AGA, Applicant resided in a hotel in State B. In about August 2018,¹ he met a woman (M) through a dating application. According to the AGA Interview Summary, M asked for gas money prior to their sexual encounter at Applicant’s hotel, and Applicant paid M approximately \$40 to \$50. At the time of the encounter, he did not think his conduct constituted prostitution; however, as of the interview, he acknowledged that this conduct amounted to prostitution. (GE 2 at 4)

In the CDS, AGA concluded that the conduct had occurred as represented in the AGA Interview Summary. In his AGA Appeal, Applicant corrected that he met M through a legitimate dating application and that M asked for gas money after their sexual encounter given the significant distance traveled. During his February 2023 OPM interview, Applicant reiterated his description of his interaction with M and that the money was to pay for her transportation and not in exchange for sexual intercourse. (GE 2 at 4; GE 3; GE 4 at 7)

At the hearing, Applicant explained that he met M on a dating website or application with the intention of engaging in sexual activity. They messaged through the application and then by texts for two or three weeks. M represented in the messages that she was

¹ At hearing, Department Counsel moved to amend the allegation to read “2018” instead of “2019.” Without objection, the motion was granted, and the allegation amended. (Tr. 134)

moving to the area from out of state to start a new job as an educator and that she was “between” jobs. Their text messages discussed several date ideas such as meals or a movie, and many messages were flirtatious and sexually explicit. In those messages, M stated that she had not engaged in sexual intercourse for about two years. On the evening at issue, M traveled over an hour by car to the hotel where Applicant resided. There was never a discussion of money for sex, but he provided her gas money because she was not currently employed. (Tr. 73-76, 106-109; GE 3)

In his AGA Appeal, in his Answer to the SOR, and at hearing, Applicant disputed the content, characterizations, and conclusions in the AGA Interview Summary. At the time of the AGA interview, Applicant was serving on active duty for the U.S. Navy in a position with the AGA. He had previously participated in, and presumably passed, counterintelligence (CI) scope polygraph examinations in about 2015 and in 2019. The March 2021 polygraph examination was a “full scope” examination, encompassing both CI and lifestyle issues. During the lifestyle portion of the examination, Applicant was asked whether he had been involved in a “serious crime.” It was Applicant’s understanding that he failed the lifestyle polygraph examination due to his physiological response to these questions. At the DOHA hearing, he testified that he had experienced a full-body rash or reaction on the morning of the polygraph examination. He also testified that he experienced extreme anxiety during the examination and even hyperventilated; however, he did not request a break or to reschedule the examination at any time. “But, I just remember that I felt there was a lot of involuntary actions or reactions within my body that I just could not control.” (Tr. 39-46, 57, 83-88, 115-118; GE 4 at 4)

After being informed that he had failed the lifestyle polygraph examination, Applicant participated in a post-examination interview with the AGA polygrapher. He testified that he remained loosely connected to a machine that measured blood pressure; however, he was no longer connected to the polygraphy apparatus at the time of the interview. Applicant estimated that the examination and interview lasted approximately three to five hours, and he felt the interviewer’s questions were ambiguous, his responses misconstrued, and the summary to be incomplete. Applicant did not prepare an affidavit or a signed statement reflecting his disclosures during the AGA interview. (Tr. 39-46, 57, 83-88, 115-118; GE 4 at 4)

Applicant was not immediately aware of the content of the AGA Interview Summary. In May 2021, he met with a Navy investigator who administered him a “rights warning.” The investigator’s questions about the post-examination interview informed Applicant that his encounters had been characterized as prostitution or criminal conduct. He did not provide the investigator with any of the messaging excerpts, and he was advised that disciplinary actions may be pursued. No disciplinary actions were pursued, and he received an honorable discharge from the Navy in August 2021. Applicant testified that he had complained to his security manager following his polygraph examination about the tone of the AGA interview; however, he did not file a complaint or submit any formal statement at the time. (Tr. 43, 122-123, 127-129)

Applicant participated in a “full scope” polygraph examination in July 2023, and he believes that he passed. The queries about serious crimes and criminal activity were raised, and he later discussed the alleged incidents from 2015 through 2018 during an interview. There is no corroborating evidence as to the 2023 examination or interview. (Tr. 113-115)

After the March 2021 polygraph examination and in preparation for his separation from the Navy, Applicant was medically evaluated. He was diagnosed with an anxiety disorder with insomnia, and the injuries sustained during his service resulted in a 100 percent disability rating in October 2021. (Tr. 41-42; GE 3 at 37)

With his April 2022 AGA Appeal, Applicant included a letter from C, who had dated Applicant from about May 2019 until at least April 2022, when she submitted the character-reference letter. In 2021, he had confided to her about the stressful polygraph examination and his belief that his disclosures had been misconstrued and interpreted without context. She was aware of the prostitution allegations regarding the massage parlor encounters, and she believed such a characterization was inconsistent with the individual she had known for nearly three years. She praised his integrity, discreet nature, reliability, and candor. (GE 3 at 17)

On December 7, 2022, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 25 – Investigations and Clearance Record, he reported that his SCI access was denied in July 2022 due to an unsuccessful lifestyle polygraph investigation with AGA. (GE 1 at 45-47)

Following the issuance of the SOR, Applicant participated in a psychological evaluation on April 8, 2025. The evaluation relied upon a two-hour clinical interview, the results of six diagnostic tests, and the “review of available documents with his security clearance polygraphy, interviews, decision, and appeal.” The psychologist noted that Applicant reported significant symptoms of Generalized Anxiety Disorder resulting from his military service.

[Applicant] reported that, during deployment to Thailand, the Philippines, and [State A], he sought out massage therapy services to assist him with managing chronic back, neck, shoulder, and leg pain. He reported that he found it difficult to locate legitimate, non-sexual massage services while abroad, and he expressed significant distress at discovering that many providers of massage services were, essentially, sex workers. (AE A at 5)

The psychologist concluded that Applicant did not meet the diagnostic criteria for any sexual disorder or other psychiatric disorder. He theorized that “[Applicant’s] past performance on his polygraph testing was very likely influenced by his anxiety disorder, his physical pain symptoms, and how he manages stress in general.” (AE A at 6) The psychologist did not provide any basis or further explanation for this conclusion. “Given [Applicant’s] diagnoses, the information obtained during the polygraph should be

regarded with caution and skepticism, given his later statements and assertions.” (AE A at 6)

Applicant denied any security infractions, security violations, or disciplinary actions while in the U.S. Navy. He testified that he served as the unofficial security manager for his unit during a portion of his 2016 overseas deployment, when he managed security badges for military personnel. He testified that he had received Navy training about human trafficking and operational security by the time he was stationed at State A in January 2015. (Tr. 36, 119, 123)

Applicant denied ever visiting “any prostitution websites.” He met the women in State A, State B, and overseas through dating applications or websites. When he was in Thailand, he intentionally avoided some of the questionable establishments and “non-legitimate businesses.” He still believes that he did not exchange money for sex in reference to the alleged encounters. He still pays for dinners or transportation when out with friends. (Tr. 76-79, 103-104)

Applicant repeatedly admitted that the allegations were “very embarrassing,” but would not cause him “great concern” if known to his current employer. He claimed that he had told his former significant other (C), his former Navy supervisor (P), and his mother about the encounters alleged in the SOR. The letter from P does not reflect awareness of the encounters, and there is no record evidence to corroborate his mother’s awareness of the incidents. His mother was somewhat aware of the 2021 polygraph examination and interview, but he admitted that he was uncertain as to whether she knew the full extent of the alleged conduct. (Tr. 79, 80, 120-121)

Whole Person

Applicant’s witness met him in college, and they were roommates during college. He praised Applicant’s judgment, integrity, and responsibility. He learned about the encounters at the massage parlor and the failed polygraph examination when preparing to testify at the hearing. (Tr. 19-26)

In addition to the letter from Applicant’s former significant other (C), Applicant submitted four character-reference letters in support of his clearance eligibility. All four letters were authored several years ago. A former professor attested to Applicant’s “exceptional performance” during a course. A former federal law enforcement officer noted Applicant’s “limitless potential.” Neither reference indicated any awareness of the conduct alleged in the SOR. (AE I)

Applicant submitted a third character-reference letter from an individual with whom he had served in the Navy and who had known Applicant for nine years at the time. He described Applicant as honest, direct, matter-of-fact, and focused. He was aware of the prostitution allegations and attributed the accusations to a misinterpretation of Applicant’s generosity. He noted Applicant’s frequent provision of cab fare or dinner to friends and co-workers. (GE 3 at 18; Tr. 79-80)

Applicant submitted a fourth character-reference letter from his former supervisor (P) in the Navy. They had served together for over five years, and he had supervised Applicant for approximately three years. He recalled escorting Applicant out of the AGA facilities following Applicant's disclosures during the March 2021 post-polygraph interview. He was unaware of the details of Applicant's disclosures but praised Applicant's honesty, loyalty, reliability, professionalism, leadership, work ethic, and dedication. He "highly recommend[ed] Applicant" for SCI access as part of the 2022 AGA Appeal. (GE 3 at 20; Tr. 79-80)

Concerning his Navy service, Applicant submitted performance reviews spanning May 2013 through November 2020. He received favorable ratings throughout. His raters described him as an "exceptional operator" and an "[i]nspiring sailor who displays exceptional leadership during unprecedented crisis." He was awarded a certificate as a "Plank Holder," a Navy and Marine Corps Achievement Medal, and a September 2015 citation for outstanding performance. (AE D; AE E; GE 3 at 38, 58)

At his current civilian employment, Applicant has received several sizable merit increases and performance bonuses. He proffered favorable performance reviews spanning May 2022 to May 2024. In February 2026, he received a promotion and a \$7,300 raise. (AE D; AE E; AE G; AE H)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J: Criminal Conduct

The security concern for criminal conduct 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.

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

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

The SOR alleges five encounters (SOR ¶ 1.e. was duplicative) of potential criminal conduct between January 2015 and August 2018. These five encounters are each somewhat unique in circumstances and are inconsistently detailed in the AGA Interview Summary and Applicant’s subsequent submissions. For example, while I found Applicant to be credible as to his intentions and the circumstances related to the certain encounters, I did not find his narrative about the January 2015 encounter to be credible. Similarly, as discussed below, doubts remain as to his vulnerability to coercion. The factfinder’s assessment of an individual’s credibility is not an all-or-nothing endeavor. A mixed credibility finding is both permissible and at times necessary.

In courtrooms across the county, triers of fact can and regularly do find parts of testimony credible and other parts incredible. Indeed, federal courts

typically instruct juries that they may do just that. See 3 Fed. Jury Prac. & Instr. 101:43 (6th ed.) (“In deciding the facts, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, part of it, or none of it.”)

Indeed, the Supreme Court’s recent *Ming Dai* decision found no reason to treat the agency factfinders differently from any other reasonable factfinder. In discussing the Board’s authority, the Court stated that an “agency, like any reasonable factfinder, is free to credit part of [a] witness’ testimony without necessarily accepting all of it. It does not matter whether the agency accepts all, none, or some of the [witness’] testimony; its reasonable findings may not be disturbed.” *Ayala-Osegueda v. Garland*, 92 F.4th 220, 230 (4th Cir. 2024) (quoting *Garland v. Ming Dai*, 141 S. Ct. at 1669, 1677 (2021)).

SOR ¶ 1.a. The record evidence established that Applicant sought out this massage parlor and was aware of the possibility of being offered sexual services by the masseuse. The AGA Interview Summary indicates he paid for sexual intercourse, and he denies any sexual intercourse or the exchange of money for sex. As to this encounter, I find that Applicant’s testimony is not credible. AG ¶ 31(b) applies given Applicant intent to solicit prostitution.

SOR ¶¶ 1.c. and 1.f. In both instances, Applicant provided excerpts of text exchanges with the two women, whom he met through dating applications. He was involved with one woman (H) for about eight months, and he credibly explained his reimbursement for H’s expenses and her assistance with his car repairs preceding their sexual encounter a month later. Although Applicant’s sexual encounter with M was followed by him providing her some gas money, he credibly explained how she had driven over an hour to his hotel and that she had not yet started her new job as an educator. I have also considered that they texted for two or three weeks before the sexual encounter and the exchange of funds. AG ¶ 31(b) is not established. SOR ¶¶ 1.c. and 1.f. are found for Applicant.

SOR ¶¶ 1.b. and 1.d. According to the AGA Interview Summary, Applicant admitted that he engaged in sexual activity with two Filipino women in 2016, after which he provided one woman approximately \$15 to \$20. The interview summary further states that he engaged in sexual activity with two Thai women in 2018, one woman requested money for transportation home, and Applicant gave her approximately \$40. Applicant does not dispute that he engaged in sexual activity with these women or that some monies, which he described as “very insignificant,” were provided for transportation home. He explained that there was no money exchanged for sexual activity and described how he had messaged these women for weeks prior to his visits and had interacted with them over multiple dates, including dancing, meals, and sightseeing. As discussed below, given Applicant’s Navy duties at the time, such foreign contacts may have been indicative of questionable judgment, but he credibly explained that these encounters did not meet the

threshold for criminal conduct. AG ¶ 31(b) is not established. SOR ¶¶ 1.b. and 1.d. are found for Applicant.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

The Government established Applicant engaged in criminal conduct in January 2015. Notwithstanding some sexual behavior reflecting questionable judgment between 2016 and July 2018, there is no other evidence of criminal conduct before or after his solicitation of prostitution in January 2015. He acknowledged that less reputable massage parlors carry the potential for problematic encounters, and he credibly testified that he avoided those environments. He has thrived in both his military and civilian careers, as evidenced by the awards, bonuses, promotions, performance reviews, and character-reference letters. Applicant's continued denial that his conduct at the massage parlor constituted prostitution undermines his evidence in support of successful rehabilitation but does not preclude the application of AG ¶ 32(d). Given the passage of time, the avoidance of high-risk environments, and the evidence of successful rehabilitation, AG ¶¶ 32(a) and 32(d) apply. Applicant mitigated the criminal conduct security concerns.

Guideline D: Sexual Behavior

The security concern for sexual behavior is set out in AG ¶ 12:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 13. The following are potentially applicable in this case:

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

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

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

As discussed above, Applicant's 2015 encounter (SOR ¶ 1.a.) at the massage parlor reflected sexual behavior of a criminal nature. AG ¶ 13(a) applies.

As discussed above, Applicant's 2016 and 2018 encounters with H and M (SOR ¶¶ 1.c. and 1.f.) did not reflect criminal conduct. He engaged in text exchanges with M for weeks and with H for months. He credibly explained that he was reimbursing H for date expenses and for her assistance with car repairs and that he was helping M pay for gas after she drove a significant distance. The record evidence did not establish that Applicant's sexual behavior in these encounters caused him to be vulnerable to coercion or reflected a lack of judgment. AG ¶¶ 13(a), 13(c), and 13(d) do not apply.

Applicant's sexual encounters with the foreign nationals (SOR ¶¶ 1.b. and 1.d.) given his military training and duties reflected questionable judgment. At the time, Applicant had spent over a year learning Mandarin Chinese and completed rigorous aircrew training. He was deployed to Pacific Region at the time of these encounters. Even if he believed his conduct did not amount to prostitution, he admitted at the hearing that he remained "very embarrassed" by the alleged sexual encounters. AG ¶¶ 13(c) and 13(d) apply.

Sexual behavior security concerns may be mitigated under AG ¶ 14. The following are potentially applicable in this case:

(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

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

This is no record evidence of questionable sexual encounters, either of a criminal nature or with foreign nationals, since 2018. Applicant has admitted the circumstances of the encounters but disputed the intent behind the payments. He has avoided less reputable environments, and he maintained a romantic relationship (with C) from May 2019 until at least April 2022. AG ¶ 14(b) applies.

Applicant's sexual encounters remain "very embarrassing" to him. No one at his place of employment is aware of the alleged conduct, despite Applicant's strongly held belief that he never engaged in any illicit activities. His former significant other (C), a fellow service member, and the witness demonstrated awareness of the alleged sexual encounters; however, there is no evidence that any other family, friends, or supervisors know the full extent of these encounters. Applicant admitted that he was uncertain to what extent his mother was aware of the allegations. Based on the current record, I cannot conclude that Applicant's conduct no longer serves as a basis for coercion, exploitation, or duress. He did not mitigate the sexual behavior security concerns.

Guideline E: Personal Conduct

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

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following disqualifying conditions are potentially applicable in this case:

(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

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

SOR ¶ 2.a. cross-alleges the security concerns in SOR ¶¶ 1.a.-1.f. Because I have concluded that the credible adverse information is sufficient under Guidelines D for an adverse determination, AG ¶ 16(c) is inapplicable. Similarly, Applicant's criminal sexual behavior, sexual behavior reflecting lack of judgment, and vulnerability to coercion were explicitly covered under Guideline D, rendering AG ¶ 16(d) duplicative. Therefore, I find for Applicant as to SOR ¶ 2.a.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline D, Guideline E, and Guideline J, and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant has thrived in both his military and civilian careers. He is highly regarded by fellow service members, friends, and a college professor. Notwithstanding his exemplary performance in the military, he demonstrated poor judgment when he engaged in one criminal encounter at a massage parlor and engaged in sexual encounters with foreign nationals while on sensitive overseas deployments. The conduct itself may be mitigated by the passage of time; however, Applicant's vulnerability to coercion given his continued embarrassment about his conduct remains an unmitigated security concern. Applicant's employer and his parents remain unaware of the full extent of the alleged conduct, of which he is "very embarrassed." Applicant mitigated the criminal conduct security concerns but did not mitigate the sexual behavior security concerns. The Government did not establish personal conduct security concerns distinct from those found sufficient under a different adjudicative guideline. Eligibility for access to classified information is denied.

This decision should not be construed as a determination that Applicant cannot obtain a security clearance in the future. If Applicant can demonstrate that the alleged conduct no longer serves as a basis for coercion, exploitation, or duress, he may overcome the aforementioned security concerns.

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 D:	AGAINST APPLICANT
Subparagraphs 1.a., 1.b., 1.d:	Against Applicant
Subparagraphs 1.c., 1.e., 1.f.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.a.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for access to classified information.

Eric H. Borgstrom
Administrative Judge