



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



In the matter of:)
)
) ISCR Case No. 14-02378
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

07/29/2015

Decision

DAM, Shari, Administrative Judge:

Applicant solicited prostitutes multiple times between 1992 and 1996, and between 2009 and 2012 while residing in Europe. He provided no evidence to mitigate sexual behavior and personal conduct security concerns. Another government agency denied him access to Sensitive Compartmented Information (SCI), based on his misconduct. Eligibility for access to classified information is denied.

Statement of the Case

On August 13, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On September 12, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline G, Sexual Behavior, and Guideline E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the

adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on October 2, 2014 (Answer), and requested the case be decided on the written record in lieu of a hearing. On February 26, 2015, Department Counsel prepared a File of Relevant Material (FORM) containing four Items and mailed Applicant a complete copy on March 26, 2015. Applicant received the FORM on April 26, 2015, and had 30 days from its receipt to file objections to the FORM and submit additional information. He did not submit any additional documentation. On June 24, 2015, DOHA assigned the case to me.

Findings of Fact

Applicant admitted the allegations contained in the SOR. His admissions are accepted as factual findings.

Applicant is a 51-year-old employee of a defense contractor, where he was hired in 2006. He earned a bachelor's degree in 1986. He was married to his first wife in 1987 and was divorced in 1992. He married his second wife in 1996. (GE 2.)

Applicant admitted in his Answer that on multiple occasions between 1992 and 1996, he solicited the services of prostitutes. Between 2009 and 2012, he solicited the services of prostitutes while traveling and residing in a European country. He stated that his interactions with the prostitutes were private, consensual and discreet. As a consequence of his behaviors, another government agency denied him access to Sensitive Compartmented Information (SCI) in 2013.

Applicant stated that his wife is aware of his indiscretions. He regrets being unable to continue assisting soldiers in his position and is disappointed in himself. (Answer.)

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 (AG) 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 access to classified information will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline D, Sexual Behavior

AG ¶ 12 expresses the security concern:

Sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 describes three conditions that could raise a security concern and may be disqualifying in this case:

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

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

Applicant admitted that on multiple occasions he engaged in criminal conduct by soliciting prostitutes between 1992 and 1996, and between 2009 and 2012. The evidence raises a disqualifying condition under AG ¶ 13(a). Due to the nature of the behavior, he may be vulnerable to coercion, exploitation, or duress. The evidence establishes a disqualifying condition under AG ¶ 13(c).

AG ¶ 14 provides conditions that could mitigate security concerns raised under this guideline:

(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 good judgment;

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

(d) the sexual behavior is strictly private, consensual, and discreet.

Applicant's improper sexual behavior, which continued into 2012, cannot be considered as happening so long ago, given that his pattern of soliciting prostitutes occurred during two different periods of time, for a total of about six years. AG ¶ 14(b) does not apply. Although his wife is aware of his indiscretions, there is no evidence that his supervisor, other employees, or members of the public know of his misconduct. The behavior remains a basis for exploitation; hence, AG ¶ 14(c) does not apply. Applicant stated that his misbehavior was private, consensual, and discreet. AG ¶ 14(d) has limited application, as his assertions are uncorroborated and prostitutes are often coerced into engaging in sexual activity for a third party's financial gain.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 describes a condition that could raise a security concern and may be disqualifying in this case:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant's pattern and history of sexual misconduct creates a vulnerability to exploitation or duress because it is the type of behavior which, if known, would be likely to adversely affect his personal and professional standing in the community. The evidence is sufficient to raise a disqualification under AG ¶ 16(e).

AG ¶ 17 includes three conditions that could mitigate security concerns arising from Applicant's personal conduct:

(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; and

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

The evidence does not establish any of the above mitigating conditions. Applicant's conduct is not minor, as it occurred multiple times over a total of six years, and it casts doubt on his trustworthiness and good judgment. Although he admitted his transgressions, he did not present evidence of positive actions he has taken to alleviate the stressors or factors that contributed to the misconduct. Because Applicant has not provided evidence that he disclosed the information regarding his sexual misconduct to his supervisor or others, he has not taken basic positive steps to reduce his vulnerability to exploitation, manipulation, or duress. Mitigation under AG ¶¶ 17(c), (d), or (e) was not established.

Whole-Person Concept

Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a 51-year-old man, who has worked for a defense contractor since 2006. He engaged in serious sexual misconduct for about six years and produced no persuasive evidence of rehabilitation or other behavioral changes that would diminish the likelihood of recurrence. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his sexual behavior and personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline D:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge