



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



In the matter of:)
)
) ISCR Case No. 11-04134
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

February 17, 2012

Decision

RIVERA, Juan J., Administrative Judge:

Applicant deliberately falsified two security clearance applications (SCA) to hide his illegal, pre-service drug involvement. Additionally, he gave false and deceiving statements to two background investigators in 2007 and 2010. Moreover, while holding a top secret clearance, he failed to timely report an unauthorized intimate relationship with a foreign national. Clearance is denied.

Statement of the Case

Applicant submitted his most recent SCA on August 16, 2010. After reviewing the results of the ensuing investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant’s request for a security clearance.

¹ Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

On August 11, 2011, DOHA issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline E (Personal Conduct) and Guideline B (Foreign Influence) of the adjudicative guidelines (AG).² Applicant answered the SOR on September 26, 2011, and requested hearing before an administrative judge. The case was assigned to me on November 4, 2011. DOHA issued a notice of hearing on November 18, 2011, convening a hearing on December 7, 2011. At the hearing, the Government offered exhibits (GE) 1 through 7. GE 7 was not admitted, but was considered for purposes of taking administrative notice. Applicant testified, presented one witness, and submitted exhibit (AE) 1, consisting of 10 documents tabbed Q through Z. All exhibits were made part of the record. DOHA received the hearing transcript (Tr.) on December 14, 2011.

Procedural Issue

Before his hearing, Applicant retained the services of a law firm to represent him in the proceedings. Applicant's counsel entered her personal appearance with Applicant's response to the SOR. On November 22, 2011, at Applicant's request, the law firm withdrew its representation. (Tr. 10; Hearing exhibit (HE) 1)

Findings of Fact

Applicant admitted all SOR factual allegations, with explanations. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having observed Applicant's demeanor and considered his testimony, I make the following additional findings of fact.

Applicant is a 53-year-old employee of a defense contractor. He completed a bachelor's degree in physics in 1987, a master's degree in engineering management in 1996, and a master's degree in systems engineering in 2008. He served on active duty in the U.S. Air Force from 1987 until May 2008, when he was honorably retired as a major (O-4). Applicant married his wife in 1981. He has a son, age 24, and a daughter, age 28, from this marriage. His son is currently a sergeant (pay grade E-5) serving on active duty in the U.S. Army, and he is deployed to Afghanistan.

Concerning his drug-related behavior, Applicant testified that as a teenager, he was involved with the wrong crowd, and between 1974 and 1977, he illegally used drugs, including marijuana, Thai sticks, hashish, methamphetamines, acid, angel dust, Seconol, and glue. He dropped out of high school, but after realizing his mistakes, he completed his General Education Diploma (GED) and attended college. While in college, Applicant participated in the Reserve Officer Training Corps (ROTC) program. He was commissioned in the U.S. Air Force in 1987.

² Adjudication of this case is controlled by the AGs, implemented by the DOD on September 1, 2006.

In September 1987, Applicant submitted his first SCA as part of his officer induction process. Section 20 of his September 1987 SCA asked Applicant whether he had ever used any narcotic, depressant, stimulant, hallucinogen, (to include LSD or PCP), or cannabis (to include marijuana or hashish). Applicant answered "No," and deliberately failed to disclose that between 1974 and 1977, he illegally used marijuana, Thai sticks, hashish, methamphetamines, acid, angel dust, Seconol, and glue. At the time, Applicant was 29 years old. He was aware that he was required to swear to the truth of his statements; however, he elected to falsify his SCA to cover his prior drug-related behavior.

Applicant was granted a top secret security clearance with access to sensitive compartmented information (SCI) in 1988 that was continued until May 2008. He also held public trust positions from January 2009 until May 2010, and from November 2010 until August 2011. There is no evidence to show that Applicant has ever compromised or caused others to compromise classified information.

Applicant submitted another SCA in February 25, 1993. Section 22a of his February 1993 SCA asked Applicant whether he had ever tried or used or possessed any narcotic (to include heroin or cocaine), depressant (to include Quaaludes), stimulant, hallucinogen (to include LSD or PCP), or cannabis (to include marijuana or hashish). Section 22b asked Applicant whether he had ever been involved in the illegal purchase, manufacture, trafficking, production, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis. Applicant answered "No" to both questions and deliberately failed to disclose that between 1974 and 1977, he illegally purchased marijuana, Thai sticks, methamphetamines, and acid. He also failed to disclose that during that same period he sold marijuana, Thai sticks, hashish, and acid. When he submitted his February 1993 SCA, Applicant was 34 years old, and had been an officer on active duty for six years. He was aware that he was required to swear to the truth of his statements.

In July 2005, the Air Force assigned Applicant to work with another sensitive Government agency (Agency) during his last service tour. Impressed by Applicant's superior performance, between December 2006 and July 2007, the Agency offered Applicant a job starting upon his retirement. The offer was conditioned on Applicant's ability to hold a security clearance. Applicant submitted a new SCA in which he stated that during the last seven years he had no illegal drug-related involvement. During the subsequent security clearance process, Applicant participated in three polygraph-assisted interviews. In his first interview on August 24, 2007, Applicant was asked whether he had ever used any illegal drugs. Applicant deliberately made a false statement to the investigator when he answered "No" and failed to disclose his illegal drug-related behavior between 1974 and 1977.

On March 3, 2008, Applicant participated in a second polygraph-assisted interview. During the initial part of his interview, Applicant again denied ever having any drug-related involvement. However, during the later part of his interview, he disclosed his illegal drug-related behavior between 1974 and 1977. Additionally, he disclosed that

between 2005 and 2007, he established sexual relationships with women online. He used websites to arrange for short-term sexual encounters with at least six women. According to Applicant's statements, all the women were either Hispanic or Asian and could have been foreign nationals.

Applicant further disclosed that from August 2006 until January 2008, he maintained a close sexual relationship with a woman (J) he met through a website. From August 2006 until August 2007, he maintained regular sexual contact with J. From August 2007 until January 2008, he maintained occasional sexual contact with J, and the last time he had sexual intercourse with J was in January 2008. He told the investigator that it was possible he would maintain sexual contact with J in the future. This was the first time Applicant disclosed to the Government his long-time sexual relationship with a foreign national.

During his third interview on March 28, 2008, Applicant added material information about J and his relationship with her. He stated that J was born in Ecuador, that he believed she was illegally in the United States, and that she was in a sham marriage with a Cuban national in order for her to receive additional benefits from the U.S. Government. J informed Applicant of her sham marriage in April 2007. (Tr. 117)

Applicant further disclosed that he had sexual relations with J approximately once a month since August 2006. During his second interview, he made the false statement that he last had sexual relations with J on February 14, 2008, and he last had personal contact with her the first week of March 2008, when he gave her \$1,000. During the later part of his third interview, he stated he last had sexual relations with J in March 15, 2008. (Tr. 110) Applicant added that he started giving money to J since their first sexual encounter in August 2006. He started helping J with her bills (giving her approximately \$1,500 a month) in April 2007. Applicant ended his relationship with J in April 2, 2008, days after his third polygraph-assisted interview. He explained that he had fallen in love with J, and it broke his heart to end the relationship, but he loves his wife and did not want to lose her.

At his hearing, Applicant denied that he lied to the investigators during the second interview; however, he admitted that his answers were deceptive. (Tr. 108) Applicant claimed he never really knew J's nationality or whether she was illegally in the United States. However, in August 2007, J refused to accept help from Applicant's wife because J was afraid Applicant's wife would notify immigration authorities of her whereabouts.

Because of Applicant time in service, his experience with the security clearance process, and because of his duty station with a sensitive Government agency, he knew that he was required to disclose to his supervisors and his security manager any intimate personal contact with foreign nationals. He deliberately failed to disclose this long-term intimate relationship with a foreign national as he was required to do. Moreover, during the security clearance interview process (between August 2007 and March 2008), Applicant repeatedly withheld information and made false statements to

investigators about his intimate personal relationship with a foreign national. Applicant did not end his relationship with the foreign national until April 2, 2008.

Because of the above questionable behavior, the Agency denied Applicant's request for a security clearance in June 2008. His appeal process concluded in September 2009, with a ratification of the denial of access. On February 4, 2010, Applicant was interviewed by another Government agency. During the interview, he was asked whether he had ever used illegal drugs. He admitted to using marijuana during high school, but he deliberately failed to disclose the full extent of his drug-related behavior between 1974 and 1977.

Applicant's wife, age 58, was born and educated in Venezuela. She immigrated to the United States in 1975, when she was 22 years old. She became a naturalized U.S. citizen in January 1988. Applicant's mother-in-law became a naturalized U.S. citizen in January 1999. She is currently living in Venezuela. His father-in-law is deceased. Applicant's wife grew up in Venezuela with two cousins, both of whom are residents and citizens of Venezuela. She has close ties of affection and obligation with her cousins and considers them her sisters. After marrying, Applicant's wife maintained periodic correspondence, telephone, and email contact with her relatives in Venezuela. In 2008, Applicant and his wife visited Venezuela and were reacquainted with her family in Venezuela. Since then, they have increased their communication to approximately twice a month, but not every month. Applicant and his wife have no financial or proprietary interests in Venezuela. All of their financial and proprietary interests are in the United States.

I take administrative notice of the following facts. Venezuela is a constitutional democracy. However, the political climate in Venezuela is highly polarized and volatile. The United States traditionally has had close relations with Venezuela, a major supplier of foreign oil to the United States, but there has been friction in relations for almost a decade under the government of President Hugo Chavez. For several years, U.S. officials have expressed concerns about human rights, Venezuela's military arms purchases (largely from Russia), its relations with Cuba and Iran, its efforts to export its brand of populism to other Latin American countries, and the use of Venezuelan territory by Colombian guerilla and paramilitary forces.

Venezuela's senior leaders, including President Chavez, regularly express anti-American sentiment. Chavez continues to define himself in opposition to the United States, using incendiary rhetoric to insult the U.S. Government and U.S. influence in Latin America. Human rights organizations and U.S. officials have expressed concern for several years about the deterioration of democratic institutions and threats to freedom of speech and press in Venezuela under the Chavez government.

Venezuela has played a key role in the development of Iran's expanding relations in Latin America. President Chavez continues to define Iran as a close "strategic ally." Since 2005, President Chavez has deepened relations with Iran, a U.S.-designated state sponsor of terrorism, by signing multiple economic and social accords and publicly

supporting Iran's controversial nuclear program. Venezuelan comments about support for Iran's nuclear program and about potential Iranian support for the development of nuclear energy in Venezuela have raised concerns among U.S. officials and other observers.

The Venezuelan government maintains very close relations with Cuba. President Chavez has also reached out to North Korea, Belarus, and Syria, the latter a state sponsor of terrorism. The Venezuelans have also embarked on a worldwide effort to strengthen economic, political and military ties with Russia and China. The U.S. remains concerned about Hezbollah's fundraising activities in Venezuela.

In May 2010, for the fifth consecutive year, the U.S. Department of State determined that Venezuela was not cooperating fully with U.S. antiterrorism efforts. Since 2006, the U.S. Department of State has prohibited the sale of defense articles and services to Venezuela because of the lack of cooperation on antiterrorism efforts. In May 2011, the 112th Congress proposed a resolution in the House of Representatives calling for the designation of Venezuela as a state sponsor of terrorism. The United States has concluded that Venezuela demonstrably failed to meet its international counter-narcotics obligations every year since 2005.

At his hearing, Applicant accepted responsibility for his questionable behavior, and repeatedly expressed remorse and apologized for his lack of judgment. He understands the security concerns raised by his actions. Applicant believes he has taken action to mitigate the security concerns. His wife, family, and U.S. Government are aware of all of his transgressions. He ended all contact with J in April 2008. His wife has forgiven him and supports him in his endeavors. Applicant averred he has learned a hard lesson and promised never to engage in such behavior again. He believes that his many years of honorable service to the United States, without any security violations, should be considered in his favor. Applicant is a loyal U.S. citizen, and his son is serving on active duty in the U.S. Army. He would never do anything to jeopardize his family or the United States.

The evidence presented includes Applicant's good service record, superior performance appraisals, awards and decorations received, and numerous highly favorable character statements. Applicant's references lauded his professionalism, analytical and managerial abilities, extensive knowledge, technical competence, proficiency, and hardworking ethic. He is considered to be dependable, trustworthy, honest, and with good judgment. Many of them endorsed his access to classified information. He is dedicated to his job, family, and the United States.

Policies

The Secretary of Defense may grant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the

Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

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.

Applicant deliberately falsified his September 1987 and February 1993 SCAs to hide his illegal, pre-service drug involvement. Additionally, he provided false statements with the intent to deceive to two background investigators in 2007 and 2010. Moreover, while holding a top secret clearance, he failed to timely report an unauthorized, long-term, intimate relationship with a foreign national. During his security clearance process, from August 2007 until March 2008, with the intent to deceive, he repeatedly withheld material information and falsified details relating to his intimate relationship with a foreign national. His falsifications and overall questionable behavior trigger the applicability of the following disqualifying conditions under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and

(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.

AG ¶ 17 lists seven conditions that could potentially mitigate the personal conduct security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being 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.

After considering the above mitigating conditions, I find that none of them apply to the facts of this case. Applicant made no effort to correct his SCA falsifications until he was confronted by Government investigators after he participated in three polygraph-assisted interviews. He falsified his SCA to hide his pre-service illegal drug-related behavior. With the intent to deceive, he made false statements and provided misleading and incomplete information to Government investigators to cover his pre-service drug use, and to hide his long-term intimate relationship with a foreign national. His falsifications, false statements, and his failure to timely disclose his intimate relationship with a foreign national are serious violations of the trust placed on him by the Government.

Because of his age, education, rank, years of service, experience with the security clearance process, and his job with a sensitive government agency, Applicant knew he was required to disclose any intimate relationship with a foreign national, and that he was required to provide truthful and candid answers during the security

clearance process. Applicant's overall behavior violated the trust placed on him by the Government. Applicant's behavior demonstrates his unreliability, untrustworthiness, dishonesty, and lack of judgment. Moreover, it shows Applicant's unwillingness to comply with rules and regulations. Guideline E is decided against Applicant.

Guideline B, Foreign Influence

The government's concern under AG ¶ 6 is that:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 sets out conditions that could raise a security concern and may be disqualifying in this case, including:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.³ Applicant, by himself or through his wife, had frequent contacts and a close relationship of affection and/or obligation with his wife's cousins and other extended family members who are residents and citizens of Venezuela.

³ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that government agents, criminals, or terrorists operating in Venezuela may exploit the opportunity to obtain information about the United States. With Venezuela's government's policies against the United States, its negative human rights record, its relations with nations sponsoring terrorism, the large criminal element operating within the country, and its lack of cooperation in anti-drug efforts, it is conceivable that Applicant, his wife, or her family members could be vulnerable to coercion.

The Government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Three Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that the above mitigating conditions apply. Applicant's contacts in Venezuela were casual and infrequent. His last visit to Venezuela was in 2008.

In deciding whether Applicant's family members are in a position to be exploited, I considered Venezuela's form of government.⁴ The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in

⁴ The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes that it makes sense to treat each country in accordance with the level of security concern or threat it presents to the United States.

assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The relationship of Venezuela with the United States places a significant burden of persuasion on Applicant to demonstrate that his relationships with his relatives and extended family members living in Venezuela do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Venezuela who might be coerced by terrorists, criminals, or governmental entities in that country.

There is no evidence that intelligence operatives, terrorists, or criminals from Venezuela seek or have sought classified or economic information from or through Applicant or his wife's relatives living in Venezuela. However, considering Venezuela's government actions, we cannot rule out such a possibility in the future. There is evidence that Venezuela has relations with other nations sponsoring terrorism or with interests inimical to the United States. This places the burden of persuasion on Applicant to demonstrate that his contacts in Venezuela do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the United States and his connections to family members.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his family members living in Venezuela. Applicant's wife left Venezuela in 1975, when she was 22 years old. She married Applicant in 1981, and became a naturalized U.S. citizen in 1988. They have a son, age 24, and a daughter, age 28, of this marriage, both of whom were born in the United States. His son is currently a sergeant (pay grade E-5) serving on active duty in the U.S. Army. Applicant and his wife have no financial or property interests in Venezuela. All of their financial and property interests are in the United States. Applicant served on active duty in the U.S. Air Force from 1987 until 2008, when he was honorably retired. His wife served with him through his career. Applicant and his wife are loyal, proud Americans.

The evidence as a whole supports a determination that Applicant's ties and sense of obligation to the United State are sufficiently strong that he could be expected to resolve any conflict of interest in favor of the United States, even under circumstances detrimental to his relatives in Venezuela. On balance, and considering the evidence as a whole, Applicant mitigated the Guideline B security concerns.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person

concept. AG ¶ 2(c). Applicant receives credit for his service to the United States and his superior performance.

Nevertheless, Applicant's egregious behavior violated the trust placed in him by the Government. His behavior demonstrates his unreliability, untrustworthiness, dishonesty, and lack of judgment. Moreover, it shows Applicant cannot be trusted to tell the truth and is unwillingness to comply with rules and regulations. The record evidence fails to convince me of Applicant's eligibility and suitability for a security clearance, and of his ability to comply with rules and regulations.

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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline E: | AGAINST APPLICANT |
| Subparagraphs 1.a - 1.g: | Against Applicant |
| Paragraph 2, Guideline B: | FOR APPLICANT |
| Subparagraph 1.a: | For Applicant |

Conclusion

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

JUAN J. RIVERA
Administrative Judge