



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 16-03129
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: Tokay T. Hackett, Esquire

01/11/2018

Decision

HOGAN, Erin C., Administrative Judge:

On December 30, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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 (AG) effective within the Department of Defense after September 1, 2006. On June 8, 2017, the AGs were updated and the AGs effective September 1, 2006 were cancelled. This decision will be decided based on the new AGs effective on June 8, 2017. If I were to consider this case under the AGs effective September 1, 2006, it would result in the same outcome.

On February 17, 2017, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 22, 2017. The case was assigned to me on October 12, 2017. On October 17, 2017, a Notice of Hearing was issued, scheduling the hearing for November 15, 2017. The hearing was held as scheduled. During the hearing, the Government offered two

exhibits which were admitted as Government Exhibits (Gov) 1 – 2. Applicant testified, called four witnesses, and offered three exhibits which were admitted as Applicant Exhibits (AE) A - C. The transcript (Tr.) was received on November 27, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 37-year-old employee of a Department of Defense contractor seeking a security clearance. He was hired by his current employer in March 2015. He has worked for various defense contractors since 2004. He has held a top secret clearance since July 2004. He has handled classified information for 14 years without incident. Applicant was born in India. He arrived in the U.S. in 1981 when he was adopted by his parents, both U.S. citizens. He became a U.S. citizen in 1985. He has a bachelor's degree. He is single and has no children. (Tr. 34-38, 43, 47-49; Gov 1; Gov 2)

The SOR consists of one allegation under Personal Conduct. It is alleged and Applicant admits to using escort services with varying frequency from 2002 to at least 2013. Applicant began to hire escorts when he graduated from college and worked a very stressful job at a hospital. He would work 24-hour shifts and then would have six days off in a row. He spent a lot of time in his off-duty hours looking at pornography on the internet. His conduct escalated to visiting massage parlors and using escort services. He used an escort service between two to three times a month. Applicant hired an escort because he believed it was legal. He admits to having sexual intercourse with the escorts. He believed it was morally wrong, but did not think it was illegal. He held a top secret clearance during most of the time when he hired escorts. (SOR ¶ 1.a: Tr. 38-40; Gov 2; Response to SOR; AE A).

Applicant stopped using escort services in 2013 after he had an HIV scare. He had unprotected sex with an escort, who later told him that she was HIV positive. Fortunately, he tested negative for HIV. After that incident, he decided to change his conduct. In 2014, a friend told him about Sex Addicts Anonymous (SAA). He began attending weekly meetings and started meeting with a sponsor once a week. His sponsor moved out of the area in 2016. (Tr. 40-42; AE A)

In 2016, Applicant also sought spiritual help by joining a Bible study group. He shared with the men in the group his temptations and struggles. He currently attends church and Bible study when his job allows. Applicant's job involves extensive travel both in and outside the United States. (Tr. 40 – 42; AE A)

In his free time, Applicant volunteers at the local historical society and as an emergency medical technician (EMT) with a local fire department. Applicant finds his volunteer work beneficial. He is proud of his job and states it is an honor to serve his country. He believes he is not a threat to national security. He looks to God, support groups, family and friends to help him struggle with his temptations. He has disclosed

his struggles to family, friends and coworkers. He believes he is not susceptible to blackmail or coercion. He is deeply ashamed of his use of escort services. (Tr. 40 – 42; AE A)

Applicant provided a notarized statement of his intent to refrain from using escort services in the future. He understands that any future violation will be grounds for revoking his security clearance. (AE B)

Applicant claims he is a different man than the man he was five years ago. He works the steps of recovery and has the tools to overcome addiction. He met with a licensed clinical social worker on one occasion. He also met with licensed clinical professionals to deal with anxiety as well his addiction issues. He admits the temptation is always there, but he has the tools to deal with his temptation. He now has a steady girlfriend. (Tr. 44 – 50)

Whole-Person Factors

Witness A is Applicant's life-long friend. Their mothers attended high school together and have remained friends ever since. He describes Applicant as being very trustworthy and having the highest character of anyone he knows. He sees Applicant on average between three and five times a year. He stays with Applicant when he is in the area on business where Applicant lives. He first learned about the allegation in the SOR about three weeks before the hearing. His opinion of Applicant has not changed after learning Applicant hired escorts over a number of years. (Tr. 19 – 20)

Witness B has known Applicant for 19 years. They met in college. He sees Applicant every few months. He describes Applicant as a very good person. Applicant is loyal, selfless, a hard worker, and a professional. He learned about the allegation in the SOR at the hearing. It does change his opinion of Applicant. (Tr. 24-27)

Witness C currently works with Applicant. He has worked for the defense contractor for four years. He is a program manager. He is a retired US Army lieutenant colonel who has held a security clearance since 1974. Applicant worked for him for one and a half years. He observed Applicant's performance usually weekly, but on occasion daily. He rates Applicant's duty performance on a scale of 1-10 as a 10. Applicant told him about the issue with his security clearance two weeks ago. He recommends Applicant for a security clearance because Applicant was honest enough to say he was in trouble. Witness C does not believe a person who currently uses escort services should have a security clearance. He understands that Applicant no longer uses escort services. He believed Applicant when he told him that he no longer uses escort services. (Tr. 28 – 33)

Mr. K is a licensed clinical social worker. He met with Applicant on February 14, 2017. He states Applicant was forthcoming and cooperative during the evaluation period and acknowledged his past use of escorts. He notes Applicant has been actively working on his recovery since 2013, by regularly attending a 12-step self-help program,

as well as a Christian support group with his church. Mr. K did not provide a diagnosis. (AE C at 1).

Mr. G has known Applicant since 2012 when he joined SAA. Applicant attended meetings at least once a week. In 2014, Applicant approached him and asked him if he could be his sponsor. Mr. G says that he is careful when accepting the position of sponsor. He wants to insure the person he sponsors is committed to their recovery. He found Applicant to be very committed to his recovery and worked the 12-step program. He finds Applicant to be humble and honest. He deeply respects Applicant and vouches for his character, stating, “[Applicant’s] work to achieve sobriety from his addiction makes him a strong contributor to any organization that values humility and truthfulness.” (AE C at 5-6)

Several other friends and co-workers wrote letters on Applicant’s behalf attesting to his integrity, excellent work ethic, dependability, and good judgment. (AE C at 2-4)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 the adjudicative process. The administrative judge’s over arching 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 access for national security eligibility 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.

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified 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 classified information. Decisions include, by necessity, consideration of the possible risk that 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.

Section 7 of EO 10865 provides that 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).

Guideline E – Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

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

The following disqualifying conditions potentially apply to Applicant's case:

AG ¶ 16(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

AG ¶ 16(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

- (1) Engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Both AG ¶ 16(c) and AG ¶ 16(e)(1) apply to Applicant's hiring of escort services on numerous occasions between 2002 to 2013. Applicant's past conduct raises issues

about his judgment, willingness to comply with rules and regulations, and reliability. This raises doubts as to Applicant's ability to protect classified information. Applicant's use of escort services over an 11-year period and while he held a security clearance, made him vulnerable to exploitation, manipulation, or duress. His activities could affect his personal, professional, and community standing.

Under Guideline E, the following mitigating conditions potentially apply in Applicant's case:

AG ¶ 17(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 17(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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

All three mitigating conditions apply. While Applicant's conduct over a period of 11 years cannot be considered a minor offense, Applicant stopped using escort services over five years ago. Applicant self-identified the problem and joined SAA and obtained counseling. He also joined and attends a Bible study group. He has made positive steps to alleviate the stressors and circumstances that contributed to his untrustworthy and inappropriate behavior. Considering he has not obtained the services of an escort for over five years, such behavior is unlikely to recur. Applicant disclosed his history of hiring escorts to family, friends, and co-workers, reducing his vulnerability to exploitation, manipulation, or duress.

While Applicant's history of hiring escort services between 2002 and 2013 raised serious security concerns, he has taken actions to deal with the problem by attending SAA, counseling and Bible study. He has demonstrated that he is reliable, trustworthy, and has good judgment.

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 the 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 considered Applicant's favorable reference letters from his superiors, co-workers, and SAA sponsor. I consider the testimony of his friends and work colleague during the hearing. Applicant's 11-year history of hiring escort services raised serious security concerns. Applicant is given credit for recognizing the problem and taking steps to deal with his sex-addiction issues in 2013. Applicant has not hired an escort in over five years. He mitigated questions raised about his trustworthiness and reliability. Security concerns under personal conduct are mitigated. Applicant is warned that should he resume similar conduct in the future, his security clearance will be revoked.

Formal Findings

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

Paragraph 1, Guideline E: FOR APPLICANT

Subparagraph 1.a: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge