



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



In the matter of:

ISCR Case No. 17-03547

Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel

For Applicant: David A. DeJute, Esq.

07/17/2018

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Between 2002 and 2015, Applicant exercised questionable judgment by engaging exotic dancers in extramarital sexual activities. His wife was unaware of his infidelity until 2016. He provided over \$300,000 in financial support to a foreign national he met at a strip club. His conduct raised security concerns under the guideline for personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On November 8, 2017, the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline E. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on June 8, 2017.

Applicant answered the SOR on December 7, 2018, and requested a hearing before an administrative judge. (Answer.) The case was assigned to another

administrative judge and then reassigned to me on January 30, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 12, 2018, scheduling the hearing for February 7, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf. The record was left open until March 7, 2018, for receipt of additional documentation. On March 7, 2018, Applicant presented a written closing argument and Exhibits (AE) A and B, which were admitted without objection. The record then closed. DOHA received the transcript of the hearing (Tr.) on February 15, 2018.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 58-year-old employee of a defense contractor. He has been employed with the defense contractor since 1985, and occupies a senior position there. He has held a security clearance since he was hired by the government contractor, although he was denied access to a sensitive compartmented information (SCI) clearance in April 2013. He married his wife in 1989, and has two sons, ages 19 and 14. (GE 1; GE 2; GE 3; Tr. 20-22, 56.)

Applicant first visited a strip club at the age of 15 or 16. At first, he visited them approximately once per year. However, by 2002 the frequency increased to monthly, and eventually to weekly visits. He paid for lap dances at the strip clubs. Sometimes he would pay for sexual activities with the entertainers outside of the strip clubs, at hotels or the home of the exotic dancer. His wife was unaware of the frequency with which he visited strip clubs and his extramarital relations with the performers. She thought he was at work. He would spend “tens of thousands [of dollars] a year” on the entertainers in the late 2000s. (Tr. 26.) He kept his spending at strip clubs a secret from his wife, as he did not want to hurt her and felt embarrassed by his behavior. He explained, “I tried not to pay for sex. I tried to pay for time, and then sex either happened or it didn’t happen, depending on how the individual and myself felt.” (GE 2; GE 3; AE A; Tr. 25, 39-53.)

While at a strip club in August 2013, he met an exotic dancer that he became enamored with. She was a citizen of Thailand, and resided in the United States with a green card.¹ He saw her at a strip club frequently between August 2013 and May 2014. He invited her out on a lunch date in November 2014, and they began an extramarital relationship. In November 2015, she “made it clear that she was not happy if [Applicant] had lap dances or saw other people,” so he ceased going to strip clubs at that time. Their relationship continued from August 2013 to December 2017. He traveled with his girlfriend for five months in late 2017. Throughout the course of their relationship, Applicant gave her \$1,000 per month in financial support so that she could stop dancing

¹ Applicant reported this foreign contact on his January 10, 2014 e-QIP, however, he refused to give her name “to protect the privacy of the individual.” He further declined to provide her identity during his enhanced subject interview on April 25, 2014. He identified her as a friend. (GE 1; GE 2.)

at the strip club. He estimated that over the course of their four-year relationship, he gave her \$300,000. He last gave her \$50,000 in December 2017. They are currently not in a relationship, and she has returned to Thailand. Applicant left open the possibility that they may get back together and he still communicates with her. (Tr. 27-39, 45-48, 54-56.)

In August 2016 Applicant's wife discovered he had been attending strip clubs, after reading an email Applicant received from his Thai girlfriend. He told her "all the basic facts that she needs to know about. That I was seeing - - going to strip clubs, that I was seeing people outside of strip clubs, that I was doing that frequently, that I was spending money doing that." (Tr. 30.) They attended marital counseling together from September 2016 to January 2018, however, his wife has filed for divorce. (AE A; Tr. 35, 49.)

Applicant's wife suggested that he attend Sex Addicts Anonymous (SAA). Applicant began attending "a few months" prior to the hearing. (Tr. 31.) It is a twelve-step program, and Applicant has a sponsor in that program who helps him with his addiction. Applicant's sponsor submitted an affidavit on Applicant's behalf, attesting to his attendance at SAA. Applicant acknowledged that he is a sex addict and his addiction has caused interpersonal relationship problems and financial strain. He attends SAA three times per week, and he has attended an SAA retreat. (AE B; Tr. 31-32.)

Applicant has not disclosed attending strip clubs or his activities with exotic dancers to his coworkers because he is embarrassed about it. His oldest son knows of his extramarital relationship, but his younger son does not. (Tr. 52.)

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, administrative judges apply the guidelines 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), 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." 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.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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.”

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 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 Executive Order 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

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 national security investigative or adjudicative processes.

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

(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.

Applicant received sexual services from women he met at strip clubs from 2002 to 2015. He also provided financial support to a foreign national who he met as an exotic dancer at a strip club. His wife was unaware of these activities until he disclosed them to her in 2016. His coworkers and youngest son do not know of this conduct. As a result, he is vulnerable to exploitation, manipulation, and duress. The evidence is sufficient to raise this disqualifying condition.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

(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 contributed to 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; and

(g) association with persons involved in criminal activities was unwitting, 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.

Applicant admits he has a sex addiction. His youngest son and his coworkers do not know of his sexual activities because Applicant remains embarrassed of his conduct. While he has confessed his actions to his wife, undergone marital counseling, and recently started attending SAA, not enough time has passed to predict that similar inappropriate behavior is unlikely to recur. His questionable judgment occurred from 2002 through at least 2016, a 14-year period. His recent conviction to receiving help is a positive step in the right direction, but does not fully overcome his long history of exercising questionable judgment. Applicant remains vulnerable to coercion. None of the above mitigating conditions apply.

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(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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant remains vulnerable to coercion. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the personal conduct security concern.

Formal Findings

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

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer Goldstein
Administrative Judge