



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



In the matter of:)	
)	
)	ISCR Case No. 07-08357
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'i, Esquire, Department Counsel
For Applicant: *Pro Se*

November 12, 2008

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline D, Sexual Behavior, and Guideline E, Personal Conduct. His eligibility for a security clearance is denied.

Applicant submitted a Security Clearance Application (SF-86) on January 12, 2007. On June 9, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline D, 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On June 23, 2008, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on August 25, 2008. I convened a hearing on September 29, 2008, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced three exhibits, which were marked Ex. 1 through 3 and admitted to the record without objection. Applicant testified on his own behalf, called no witnesses, and introduced three exhibits, which were marked Exs. A, B, and C. Applicant's Exs. A and C were admitted to the record without objection. Applicant's Ex. B was admitted to the record over the Government's objection.

DOHA received the transcript (Tr.) of the hearing on October 3, 2008.

Findings of Fact

The SOR contains two allegations of disqualifying conduct under AG D, Sexual Behavior (SOR ¶¶ 1.a. and 1.b.) and two allegations of disqualifying conduct under AG E, Personal Conduct (SOR ¶¶ 2.a. and 2.b.) In his Answer to the SOR, Applicant admitted all allegations under AG D and AG E. Applicant's admissions are admitted herein as findings of fact.

Applicant is 35 years old and employed as a construction specialist by a government contractor. From October 1991 to August 1996, he served in the U.S. military. In approximately 1993, he was granted a security clearance and eligibility for access to Sensitive Compartmented Information (SCI). From September 1996 to May 2004, Applicant was employed by government contractor A. From 2004 until the present, Applicant has been employed by government contractor B. (Ex. 1; Ex. 2; Tr. 22, 45-47.)

Applicant was married for the first time in December 1992, when he was 19 years old and stationed in a European country. He married a young woman he had known before entering the military. He and his first wife separated in about September 1993, and she returned to the United States. He and his wife divorced in April 1994. (Tr. 41-44.)

Applicant married for the second time in June 2001 while he was working overseas for government contractor A. He married a woman who was a U.S. military service member. He and his second wife divorced in May 2004. (Ex. 1; Tr. 44.)

Between 1992 and 1996, while serving in the U.S. military, Applicant traveled to approximately 25 foreign countries in the course of carrying out his extended assignments. The foreign countries were located in Europe, the former Soviet Union, and Asia. While on these assignments, Applicant met and had sexual relationships with foreign nationals. In an affidavit he signed November 30, 2007, Applicant described his relationships with foreign national women as "casual and short term." He denied that his behavior could be used to coerce or blackmail him. At his hearing, he admitted that

some of his encounters with foreign national women involved paying for sexual intimacies. He knew that paying for sex was illegal. Between 1992 and 1996 and 2003 to 2006, as an active duty military member and as a government contractor, Applicant had sexual relations with foreign nationals on more than 50 occasions. (Tr. 22-24, 30.)

As a government contractor, Applicant was assigned to do work in China. He was told by his employer not to have any foreign contacts. He had sexual relations with a woman in China who told him she was a foreign national from another Asian country. Applicant reported the incident to a U.S. embassy official, but he did not report the incident to his employer's cognizant security officer. (Tr. 27-29.)

Applicant and his second wife separated in June 2003, while he was employed in a European country by employer A. After his separation, Applicant felt lonely and frequented massage parlors in the European country and paid for sexual intimacies on several occasions. He returned to the United States in April 2004. Between 2004 and January 2006, he felt isolated because he was living in an area where he had no friends or family. He visited two massage parlors in the United States and paid for numerous sexual intimacies. He also visited women for paid sex services who worked out of their homes. Additionally, he identified women for paid sex services by visiting an on-line computer service. (Ex. 2; Tr. 29-30.)

In February 2006, Applicant met a woman through an internet dating service. In July 2006, Applicant underwent two polygraph examinations and an interview, as required by another government agency in order to have access to SCI. In August 2006, Applicant's security clearance and eligibility for access to SCI were revoked. Applicant and the woman began to cohabit in January 2007. (Ex. 2; Ex. B.)

On November 30, 2007, at the request of an authorized investigator from the Office of Personnel Management, Applicant provided a signed affidavit relating some of his sexual behavior. He gave the affidavit to his girlfriend to read, and she found his revelations to be upsetting. In order to re-establish the girlfriend's trust, the couple attended eight sessions of relationship counseling over a period of about ten weeks. (Tr. 37-40.)

Applicant has had concerns that he has a sexual addiction. The issue was not addressed during the relationship counseling. After the counseling ended, he discussed the matter once on the telephone with the counselor he and his girlfriend consulted. He has not pursued any further individual counseling. He stated: "I could never seek help because I could never tell anybody about it." He does not now believe he has a sexual addiction. (Tr.53-58.)

In April 2008, Applicant and his girlfriend became the parents of an infant daughter. They have plans to marry in the spring of 2009. Applicant has not told his girlfriend that he paid foreign nationals for sex while he was at military stations. She also does not know that he had sex about 50 times with foreign nationals. (Tr. 40-41, 51-52.)

Applicant's supervisor at employer B provided a letter of character reference in which he stated his belief that Applicant was truthful and trustworthy in all respects. Applicant did not reveal the content of the SOR allegations to his supervisor or to anyone else at employer B. (Tr. 50-51, 62.)

Neither Applicant's military command nor employer A knew of Applicant's sexual contacts with foreign nationals. Applicant's work in the military took him to military installations and U.S. embassies around the world. Applicant acknowledged that he had received security awareness training and had been alerted that some foreign agents employed women to try to obtain classified information in exchange for sex. Applicant ignored the security admonitions and continued his sexual activity with foreign nationals. He said his co-workers did the same. (Tr. 60-62.)

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), 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 to classified information will be resolved in favor of 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, 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 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 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 D, Sexual Behavior

AG ¶12 identifies the government’s concern with Guideline D, in pertinent part, as follows:

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

During his military service, from 1992 to 1996, Applicant was assigned to extended military travel in Europe, the former Soviet Union, and Asia. While on these military assignments, Applicant engaged in sexual liaisons with foreign national women. Against the advice of his security officer, he carried out a sexual encounter with a foreign national in China. In some instances, while assigned to military duty overseas, he paid foreign national women for sexual intimacies. From 2003 to 2006, as a government contractor, Applicant paid for sexual intimacies at massage parlors in a European country and in the United States. He knew that paying for sex was illegal. In the United States, he visited women in their homes for sexual intimacies, and he sought sexual relationships online. He carried out this behavior even though he had been briefed by his security officers and warned about the possibility that high risk sexual liaisons of the kind he carried out could be used to subject him to undue influence, coercion, or exploitation. Applicant’s sexual behavior while assigned to military duty overseas and as a government contractor reflected lack of discretion and judgment. I conclude that Applicant’s sexual behavior raises security concerns under AG ¶¶ 13(a), 13(b), 13(c), and 13(d).¹

¹ AG ¶ 13(a) reads: “sexual behavior of a criminal nature, whether or not the individual has been prosecuted.” AG ¶ 13(b) reads: “a pattern of compulsive, self-destructive, or high risk sexual behavior that the person is unable to stop or that may be symptomatic of a personality disorder.” AG ¶ 13(c) reads:

An applicant might be able to mitigate Guideline D security concerns. If the sexual “behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature,” then AG ¶ 14 (a) might apply. If “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,” then AG ¶ 14(b) might apply. If “the behavior no longer serves as a basis for coercion, exploitation, or duress,” the AG ¶ 14(c) might apply. Finally, if “the sexual behavior is strictly private, consensual, and discreet,” then AG ¶14 (d) might apply. Applicant was an adult when he carried out the sexual behavior that raises security concerns. While he expressed concern that his behavior might reflect a sexual addiction, he also denied such an addiction. He did not seek an evaluation of his sexual behavior from a qualified professional counselor. He stated: “I could never seek help because I could never tell anyone about it.” His sexual behavior was indiscreet and reflected poor judgment. It was repetitive and involved taking high risks that made him vulnerable to coercion, exploitation, or duress. I conclude that none of the Guideline D mitigating conditions apply to the facts of Applicant’s case.

Guideline E, Personal Conduct

Under the Personal Conduct guideline “[c]onduct 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 ¶ 15

Applicant’s high risk sexual behavior was in contravention of the security training provided to him by his military commands and his government contractor employers. He purposefully concealed information about his sexual behavior from his commands and his employers. He also betrayed the trust of his girlfriend by failing to tell her the whole truth about his sexual behavior. I have carefully considered all of the Personal Conduct Disqualifying conditions. I have especially considered AG ¶ 16(e), which reads as follows: “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 by the foreign security or intelligence service or other group.”

Applicant was awarded a security clearance and eligibility for access to SCI. He was assigned abroad and entrusted with classified information. He then engaged in high risk sexual behavior with foreign nationals that he kept secret and did not report to

“sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.” AG ¶ 13(d) reads: “sexual behavior of a public nature and/or that reflects lack of discretion or judgment.”

his security officers, making him vulnerable to exploitation, manipulation, or duress. The behavior, paying for sexual intimacies, was illegal in the United States and could have served as a basis for exploitation by foreign security or intelligence services or other groups. Accordingly, I conclude that AG ¶16(e) is raised by the facts of Appellant's case.

Applicant's disqualifying personal conduct might be mitigated if he "made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG ¶ 17(a) Additionally, Applicant's disqualifying conduct might be mitigated if he "has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress." AG ¶ 17(e)

Applicant did not make prompt good faith efforts to correct his concealment. He has not addressed whether he has a sexual addiction that would lead future high-risk sexual behavior and a similar pattern of concealment. I conclude that neither AG ¶ 17(a) nor AG ¶ 17(e) applies to the facts of Appellant's case.

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(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) 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. Over a 14-year period, from 1992 to 1996 and from 2003 to 2006, Applicant disregarded the security training he received and carried out high risk sexual behavior in the United States, Europe, the former Soviet Union, and China. He kept his actions secret and did not report them to his military commands or his civilian employers. He deceived his fiancée after seeking her trust. He failed to mitigate serious concerns about his credibility, reliability, trustworthiness, and ability to put the government's interests before his own in the protection of classified information. AG ¶ 2(a)(7).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed 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 section E3.1.25 of Enclosure 3 of the Directive, are:

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

Conclusion

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

Joan Caton Anthony
Administrative Judge