



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



In the matter of:)
)
) ISCR Case No. 24-00375
)
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

05/16/2025

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline M (Use of Information Technology), Guideline B (Foreign Influence), Guideline D (Sexual Behavior) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

On May 2, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline M, Guideline B, Guideline D, and Guideline E. The DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on May 28, 2024 (Answer) and requested a decision based on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA), in lieu of a hearing. On June 10, 2024, Department Counsel requested a hearing in accordance with E3.1.3 of DOD Directive 5220.6. The hearing convened as scheduled on April 22, 2025. Department Counsel offered into evidence Government Exhibits (GX) 1-3. Applicant testified and did not provide any additional evidence. All exhibits were admitted without objection. During the hearing, Department Counsel motioned to amend the SOR, revising subparagraphs 1.a, 1.b, 1.c and 2.c. Applicant did not object and the SOR was amended. DOHA received the hearing transcript (Tr.) on April 29, 2025.

Findings of Fact

In his Answer to the SOR, Applicant admitted SOR allegation ¶ 4.a. He denied allegations ¶¶1.a through 1.d, 2.a through 2.c and 3.a. His admissions are incorporated into my findings of fact. After a thorough review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 54 years old. He is married and has one child and a stepchild, both adult age. He earned a bachelor's degree in 2011 and a master's degree in 2013. In 2019, he earned a second master's degree with a focus in cybersecurity and information assurance. (GX 1; Tr. 16-30)

In 1988, Applicant enlisted, active duty, in the Navy. At an unspecified date, he commissioned as an officer and retired as a commander (O-5) in 2022. He has held a security clearance since early in his military career. Prior to the events described below, he had not previously had any security incidents. (GX 1; Tr. 16-30)

Following his retirement, Applicant began working as a contractor at a facility where he had previously worked. He worked in a Sensitive Compartmented Information Facility (SCIF) where he accessed both the Non-classified Internet Protocol Router Network (NIPRNet) and the Secret Internet Protocol Router Network (SIPRNet). He described feeling isolated as he had no desk phone and was not allowed to bring a cellphone into the workspace. He began to access Facebook and his personal email through the NIPRNet. He testified that accessing Facebook and his email through NIPRNet was permitted. (GX 1; Tr. 20-28, 50-54)

Shortly after starting his new position in December 2022, Applicant began planning an event where he and several of his male friends would rent a villa in the Dominican Republic and fly there in February 2023 to watch the Super Bowl. His physical therapist was from the Dominican Republic and put him in contact with her niece, Ms. J, who lived there. He reached out through Facebook and began corresponding with Ms. J. He stated that his initial goal was to have women in the Dominican Republic that his group could take to restaurants and clubs and "hang out" with. (Tr. 23) He described that his marriage was poor at the time, and he was thinking about engaging in sexual relations with these women while on the trip. (Tr. 19-45)

From December 2022 until his trip in February 2023, Applicant's communications with Ms. J expanded and he asked if she had any pictures of herself that were not on Facebook. She sent him nude photos and other sexually explicit photos and videos. He reciprocated by sending similar photos of himself but claimed that he could not be identified by the pictures because he did not include his face. He planned to have sexual relations with Ms. J on his visit. During their communications, she asked him for money. He sent her about \$50 but claimed this was not a "*quid pro quo*" and did not recall whether he had sent her money before or after she sent him pictures. (GX 2; Tr. 20-33)

Applicant also contacted several of Ms. J's friends through Facebook. He estimated that, in total, he communicated with about five additional women from the Dominican Republic and received sexually explicit photos from several of them. He also sent one of the women \$40 and further claimed that this was not in exchange for any pictures she sent him. (GX 2; Tr. 20-33)

Several of the communications and photo exchanges with Ms. J and the other women from the Dominican Republic occurred while Applicant was at work and through his NIPRNet computer. He described that he would view the sexually explicit material through Facebook and then move the files to and from his personal email. He also completed the money transfers through his NIPRNet computer. (GX 2; Tr. 20-31)

As planned, Applicant traveled to the Dominican Republic in February 2023. Ms. J spent about two days with him, and they engaged in sexual relations. He testified that he took her out to dinner and activities but denied he gave her money for sex. While on the trip, he did not meet any of the other women he had been communicating with. After an unspecified number of days, he returned from his trip. (GX 2; Tr. 34-36)

On March 3, 2023, a government cybersecurity division issued a report stating that the User Activity Monitoring (UAM) System detected Applicant had conducted activities at his workstation that were in violation of user agreements. Following a review of his computer usage, the cybersecurity division stated Applicant had been in contact with about 25 foreign nationals from different parts of the world and that he was "soliciting them for videos, pictures, and meetings of sexual nature in exchange for monetary compensation." It was further noted that he had downloaded and saved pictures "of a sexual nature" and had downloaded and sent sexually explicit pictures of himself to and from his workstation. The report also confirmed, in review of his Facebook correspondence, that he had met with at least one foreign national that he had identified for sexual engagement. The report concluded that from his workstation, Applicant had solicited sexual favors, transmitted and received pornographic images and videos, transferred money to multiple women to facilitate sexual favors, had a confirmed sexual liaison, and exhibited foreign influence vulnerability. Shortly after the report was issued, his employment was terminated. (GX 2-3)

In review of the report at hearing, Applicant denied that he communicated with 25 foreign nationals. Instead, he claimed that the report likely reflected any contact he had within Facebook. He admitted that, in addition to communicating with individuals in the

Dominican Republic, he maintained contact with individuals from Bahrain and Sudan who he had met during previous deployments. However, he stated he only maintained annual contact with them and their correspondence was never sexual in nature. He also denied ever “soliciting” anyone for pictures or for sex. (Tr. 33) He reiterated that he never solicited Ms. J and that their sexual engagement occurred without payment. (Tr. 20-26, 33-44)

Applicant testified that he was aware of various federal policies regarding inappropriate digital conduct on Government computers, as he was previously assigned to cybersecurity and tasked with monitoring the digital conduct of others while in the Navy. He admitted to receiving annual training regarding appropriate computer usage. He also admitted that his viewing of sexually explicit material on his work computer was “totally wrong” and described it as a “brief lapse of judgment” that has not been repeated. (Tr. 79) He denied that he could be coerced based on the explicit photos he sent because he never showed his face and that his Facebook account only identified him by a nickname. (Tr. 20-31, 56-61, 79)

Applicant continued to correspond with Ms. J into the summer of 2023, but has since terminated all contacts with women from the Dominican Republic. He maintains annual contact with individuals in Bahrain and Sudan but has not sought out additional foreign contacts. After he was terminated in March 2023, he informed his wife that he had viewed inappropriate material on his work computer and communicated with foreign nationals. He did not inform her that he had sexual relations with Ms. J while in the Dominican Republic. He acknowledged that his wife’s discovery of the relationship would harm their marriage. On starting with his current employer in September 2023, he disclosed his foreign contacts to his supervisor and informed them of his previous computer conduct. (GX 3; Tr. 35-40, 65-70)

Applicant stated that he had successfully served in the Navy for over thirty years without incident and was a valued member of his company. He further noted that two years had passed since the incident, and he has had no desire to repeat the conduct. His marriage has improved, and he stated he had learned from his mistakes. (GX 1; Tr. 70-79)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” 484 U.S. 518, 531 (1988)

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 list potentially disqualifying conditions and mitigating conditions, which are 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 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 not drawn 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline M, Use of Information Technology

The security concern relating to use of information technology is set out in AG ¶ 39:

Failure to comply with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology includes any computer-based, mobile, or wireless device used to create, store, access, process, manipulate, protect, or move information. This includes any component, whether

integrated into a larger system or not, such as hardware, software, or firmware, used to enable or facilitate these operations.

The adjudicative guideline notes several conditions that could raise security concerns under AG ¶ 40. The following is potentially applicable:

- (e) unauthorized use of any information technology system.

From December 2022 into February 2023, Applicant used his work computer to receive and send sexually explicit photos and videos with foreign nationals. This conduct was unauthorized and in violation of computer-use agreements. The security concern under AG ¶ 40(e) is established.

I have considered the mitigating conditions for the use of information technology under AG ¶ 41 and the following is potentially applicable:

- (a) so much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Just over two years have passed since Applicant's violations of computer conduct were discovered. At the time, he knew that his conduct was wrong and reflected poor judgment. He informed his current employer of his previous computer-use violations and has not repeated the conduct. He has terminated his communications with the women from the Dominican Republic. The record is absent any other instances where Applicant inappropriately used his work computer to send or receive sexually explicit material. These are relevant factors in considering mitigation under AG ¶ 41(a).

However, from December 2022 into February 2023, Applicant repeatedly violated computer-use agreements. Given his education, extended military service, and prior duties in cybersecurity, his actions reflect a willful disregard to the rules relating to computer usage. Additionally, he denied he could be coerced because he could not be identified in the sexually explicit pictures he sent. Given his digital expertise, this is a remarkably naïve understanding of the various digital identifiers and footprints that attach to files sent electronically. This conduct continues to raise doubts as to his reliability, trustworthiness and judgment. Mitigation under AG ¶ 41(a) has not been established.

Guideline B, Foreign Influence

The security concern relating to foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way

inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The adjudicative guideline notes several conditions that could raise security concerns under AG ¶ 7. The following is potentially applicable:

- (a) contact, regardless of method, 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.

Applicant admitted requesting and receiving sexually explicit photos and videos from multiple women from the Dominican Republic. He sent sexually explicit photos of himself to these women and wired money to at least two of them. In February 2023, he traveled to the Dominican Republic and had sexual relations with one of these women. He hid this conduct from his wife and she remained unaware of it as of the date of the hearing. These actions placed him at a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Security concerns under AG ¶ 7(a) are established.

I have considered the mitigating conditions for foreign influence under AG ¶ 8 and the following are potentially applicable:

- (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 United States;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, 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.

Shortly after losing his employment in March 2023, Applicant claimed he terminated all contact with women from the Dominican Republic. While he continues to

communicate with individuals in Bahrain and Sudan, these are annual contacts that he has maintained since his prior military service in the area. He claims these contacts are not sexual in nature. He also claims he has not sought out any additional foreign contacts. Mitigation under AG ¶¶ 8(a), 8(b) and 8(c) must be considered.

Just over two years have passed since Applicant participated in the conduct that has raised security concerns. His wife still does not know of his sexual relationship with Ms. J and he has acknowledged that her discovery of that relationship would negatively impact his marriage. Additionally, the investigation concluded that he communicated with more foreign nationals from different parts of the world seeking videos and pictures of a sexual nature. While those additional contacts were not alleged in the SOR, they undercut assertions of mitigation as his efforts to maintain relationships with foreign nationals may be more extensive. Insufficient time has passed for Applicant to establish that he will no longer seek out foreign companionship or that he has fully removed himself from any foreign influence or possible exploitation. Mitigation under AG ¶¶ 8(a), 8(b) and 8(c) is not fully applicable.

Guideline D, Sexual Behavior

The security concern relating to sexual behavior is set out in AG ¶ 12:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

The adjudicative guideline notes several conditions that could raise security concerns under AG ¶ 13. The following are potentially applicable:

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

(d) sexual behavior of a public nature or that reflects lack of discretion or judgment.

Several of the SOR allegations under Guideline M and Guideline B were cross alleged under Guideline D. From his work computer, Applicant exchanged sexually explicit photos and videos with multiple women from the Dominican Republic. While he denied any *quid pro quo*, he also sent money to two of the women that shared photos with him. He then traveled to the Dominican Republic and had a sexual relationship with one of the women and spent money on her while he was there. He admitted that his wife

has no knowledge of his activities in the Dominican Republic and her discovery would hurt their marriage. Security concerns under AG ¶¶ 13(c) and 13(d) are established.

I have considered the mitigating conditions for sexual behavior under AG ¶ 14 and the following are potentially applicable:

- (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 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.

The conduct at issue occurred just over two years ago. While Applicant claimed he has terminated his relationship with the women he met from the Dominican Republic and is no longer exchanging sexually explicit photos from his work computer, the conduct was recent and, having been coordinated through his work computer, not private or discreet. His wife remains unaware of his conduct. There remains an ongoing vulnerability to coercion or exploitation. Mitigation under AG ¶¶ 14(b), 14(c) and 14(d) is not applicable.

Guideline E, Personal Conduct

The security concern relating to 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 adjudicative guideline notes several conditions that could raise security concerns under AG ¶ 16. The following are potentially applicable:

- (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
- (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;
- (2) while in another country, engaging in any activity that is illegal in that country; and
- (3) while in another country, engaging in any activity that, while legal there, is illegal in the United States.

The SOR allegations under Guideline M, Guideline B and Guideline D were cross alleged under Guideline E. Applicant's conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. This conduct is sufficient for an adverse determination under the Guidelines previously discussed. However, the general security concerns under AG ¶¶ 15 and 16(c) are established. His conduct also created a vulnerability to exploitation, manipulation, and duress. AG ¶ 16(e) is established.

I have considered the mitigating conditions for personal conduct under AG ¶ 17 and the following are potentially applicable:

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

Since the discovery of his actions and subsequent termination of his employment in March 2023, Applicant claimed he has ended all contacts of a sexual nature with foreign nationals and had no security incidents with his current employer. His relationship with his wife has improved and he took responsibility for his conduct with the understanding that he exercised poor judgment.

Nonetheless, Applicant's actions from December 2022 through February 2023 were not minor and continue to raise concerns relating to his reliability, trustworthiness and judgment. His wife continues to remain unaware of his conduct and the extent of his relationship with a foreign national. Insufficient time has passed for Applicant to have established that the behavior is unlikely to recur and that he has sufficiently reduced the vulnerability to exploitation, manipulation or duress. Mitigation under AG ¶¶ 17(c) and 17(e) is not applicable.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline M, Guideline B, Guideline D and Guideline E in my whole-person analysis.

Applicant honorably served in the Navy for over 30 years. Until the events discussed above, he had held a security clearance for most of his career without incident. At the hearing, he admitted he previously exhibited poor judgment and had since changed his behavior. Nonetheless, more time is necessary for him to reestablish that he can maintain the reliability, trustworthiness and judgment necessary to hold a security clearance.

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 M:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a – 2.c:	Against Applicant
Paragraph 3, Guideline D:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Paragraph 4, Guideline E: AGAINST APPLICANT

Subparagraph 4.a: Against Applicant

Conclusion

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

Bryan J. Olmos
Administrative Judge