



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



In the matter of:

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ISCR Case No. 23-01450

Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq., The Edmunds Law Firm

04/03/2025

Decision

LOKEY ANDERSON Darlene D., Administrative Judge:

Statement of the Case

On March 30, 2023; March 27, 2023; July 17, 2019; and April 23, 2013, Applicant submitted security clearance applications (e-QIPs). (Government Exhibits 1, 2, 3, and 4.) On August 22, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B, Foreign Influence and Guideline E, Personal Conduct. The action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant answered the SOR on September 10, 2024, and requested a hearing before an administrative judge. The case was assigned to me on November 13, 2024. The Defense Office of Hearings and Appeals issued a notice of hearing on January 23,

2025, and the hearing was convened as scheduled on February 20, 2025. The Government called one witness, and offered nine exhibits, referred to as Government Exhibits 1 through 9, which were admitted without objection. The Applicant offered nineteen exhibits, referred to as Applicant's Exhibits A through R, which were admitted without objection. Applicant testified on his own behalf and called two witnesses. The record remained open until close of business on February 25, 2025, to allow the Applicant and the Government to submit additional supporting documentation. The Government submitted five additional exhibits, referred to as Government Post-Hearing Exhibits 10 through 15, which were admitted into evidence. Applicant submitted one additional exhibit, referred to as Applicant's Post-Hearing Exhibit S, which was admitted into evidence. DOHA received the transcript of the hearing (Tr.) on March 3, 2025.

Procedural Rulings

The Government requested I take administrative notice of certain facts relating to the country of Thailand. Department Counsel provided a five-page summary of the facts, supported by nine Government documents pertaining to Thailand, identified as HE 1. The documents provide elaboration and context for the summary. Applicant had no objection. (Tr. pp. 17-18.) I took administrative notice of the facts included in the U.S. Government reports. (HE-1.) They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Applicant submitted information concerning the U.S./Thailand Bilateral Relations, and information from the U.S. Department of State that I will also consider. (Applicant's Exhibits A and Q.)

Findings of Fact

In response to Guideline B, Foreign Influence: Applicant admitted in part, and denied in part, allegation 1.a. He denied allegation 1.b. of the SOR.

In response to Guideline E, Personal Conduct: Applicant admitted with clarification allegation 2.a., and denied allegations 2.b. and 2.c. of the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 59 years old. He has never been married and has no children. He has a bachelor's degree in professional aeronautics and military training. He currently holds the position of Test Engineer with a defense contractor. He is applying for a security clearance in connection with his employment. He began working for his current employer in July 2016. (Government Exhibits 1, 2, 3, and 4.)

Applicant joined the U.S. Navy in November 1991, and served with distinction until September 2011, when he retired honorably, as an E-6, First Class Petty Officer, with over twenty years of service. During his military service, he received a number of

awards, commendations, ribbons, badges, and medals, including 5 Navy Achievement Medals, 5 Good Conduct Awards, 2 Military Unit Commendations, 4 Battle "E" awards, 2 National Defense Medals, 2 Southwest Asia Medals, and 8 Sea Deployment Medals, among many others. He held a security clearance throughout the course of his military career without incident. (Applicant's Exhibit R, and Tr. p. 100.)

In late 2010, while visiting Thailand as a tourist, Applicant met a citizen and resident of Thailand, who became his girlfriend. She was a bar girl or hostess when he met her. (Tr. p. 114.) After about a year, she stopped working, and Applicant has been financially supporting her for the past 14 years. From late 2010 to September 2016, Applicant would see her every couple of days or so. (Tr. pp. 113-115.)

From 2016 to the present, Applicant has held various positions, at different locations with his current employer. In 2016, Applicant moved to South Korea for the job and found it easier to pursue the relationship with his girlfriend. She would fly from Thailand to visit him in South Korea and easily stay a month or so, living with him, before going back to Thailand. For the past fifteen years they have been in a romantic relationship. She has one 9-year-old son with a different man. Applicant's girlfriend has no affiliation with any apparatus of the government of Thailand. Applicant stated that his girlfriend's only job now has been to take care of her sister. He maintains regular daily or weekly telephonic contact with his girlfriend. Applicant normally sends her about \$300 monthly, but whenever she asks for more money, he sends it. He gave her \$10,000 for an anniversary gift about seven years ago. Applicant acknowledged that she has been able to save somewhere around \$35,000 over the years since he began giving her money. He sends this money for her to pay her living expenses and so that she can save for his retirement. In September 2020, Applicant was transferred from South Korea to the U.S. He now resides in the U.S., and only travels to see his girlfriend one time a year. He plans to move to Thailand after he retires and to purchase a house there. In October 2020, Applicant was considering breaking up the relationship, but still has not done so. Applicant last traveled to Thailand in December 2024. (Tr. pp. 93-95, and 98, 114-117.)

Applicant stated that he reported his relationship with his girlfriend to his company's security office, via his supervisor, in compliance with security rules and regulations. He also stated that he filled out a Form SF-86 C and submitted it through his supervisor to his company security office. Applicant's relationship is common knowledge to company officials and employees that know him. (Tr. p. 107.)

Applicant testified that during Covid he sent money to two other female foreign nationals, who live in either in South Korea and/or Thailand. Applicant testified that these women worked at a restaurant that Applicant regularly frequented. They both lost their jobs during Covid and he sent them \$200 to help them out during the pandemic. (Tr. p. 96.)

Applicant, who was raised Christian and believed in being charitable, testified that he helps people out when he sees that it is necessary. He admits that for about a year and a half, during the evening hours when he was off work, he would go around

town and work at Asian restaurants for free. By doing so he met women and was able to date some of them who worked at these establishments. (Tr. pp. 97-98.)

Due to Applicant's extensive foreign travel to Asia and financial support provided to Asian women, he was at some point, under investigation by OSI and by the FBI. (Government Exhibits 13 and 14)

Information developed during Applicant's background investigation indicates that Applicant also sent money to other Asian female foreign nationals in Thailand and/or South Korea that he met in bars. He would occasionally go on dates and have sex with these "side girls" without his girlfriend's knowledge. (Tr. pp. 95-96.) A witness who knows and has worked with the Applicant also testified that Applicant admitted to him that he would have sex with various females he met during some of his trips to Asia. Applicant denies sexual relations with any of these women. (Tr. pp. 86-88, and 106, 121-122, and Government Exhibits 10, 11, 12, 13, and 14.) This conduct is not alleged in the SOR.

In August 2020, Applicant's personnel manager informed him that his security clearance and access to classified information was suspended. (Government Exhibits 7 and 9, and Tr. pp. 100-101.)

Applicant's background investigation also disclosed several incidents of inappropriate behavior that occurred while employed as a civilian in the defense industry. Of particular concern is an incident that occurred in about April 2016, during a 6-month period of employment with a previous defense contractor. Applicant brought a target practice silhouette, with bullet holes in it, into the workplace and hung it on the office wall where it was visible to all. Names of coworkers were written on the silhouette as well as threats. When he was told to take it down, he laughed and said it was a joke. He was counseled for his actions. He also brought a sword to work and took it out of its case in front of his coworkers. He was told to take it out of the workplace and to never bring it back. Applicant said he was just trying to demonstrate the proper use of the sword. Applicant was not well-liked and acted unprofessionally in the workplace. In 2016, Applicant was terminated from this employment after receiving a reprimand for a conflict with a coworker. A woman who worked for a subcontractor filed a complaint against the Applicant claiming that he was harassing her. At this point, it was clear that Applicant had pushed the limits, and his company wanted to fire him. Applicant claims that he was released from the company after a reprimand. The company claims that he was terminated. (Government Exhibits 10, 11, 12, 13, 14, and Tr. pp. 101-105.)

Sometime in 2019, while working for his current employer, Applicant was involved in a verbal altercation with a co-worker that created a hostile work environment. Applicant was accused of yelling and screaming at the coworker and was very disrespectful. A witness to the argument indicates that Applicant is opinionated and vocal. He tends to speak without a filter, at times saying things that cross over into being highly inappropriate. Nothing came of this verbal altercation. (Tr. pp. 105-106, and Government Exhibits 5 and 10.) Applicant admitted that he had a personality conflict with the co-worker but denied any misconduct. (Tr. p. 107-108.) Applicant

stated that he received an above normal pay raise, about a year and a half ago, and a Bravo award for excellent work performance. (Tr. p. 91.) He has had no disciplinary issues during his current employment.

Allegation 2.c., of the SOR is found for the Applicant. The Government conceded and provided no evidence to support the allegation. (Tr. p. 127.)

Applicant's senior manager who has held a security clearance for over twenty years, testified and confirmed that Applicant told him that he was having a romantic relationship with a woman in Thailand, and that he was sending money to her in Thailand. Applicant's manager stated that he believed the relationship was going on well before Applicant started working for their company. He further testified that the company is aware that it is very common for individuals working overseas to have relationships with "local women" and it is not a concern or a red flag. He further stated that Applicant is an outstanding employee, who has exceeded standards and goes above and beyond expectations with the company. (Tr. pp. 67-68.) He recommends Applicant for a security clearance.

A senior principal field engineer, who worked with the Applicant in Korea, on the same projects, testified that Applicant was passionate about his work and was a true professional. He and his wife had dinner with the Applicant and his girlfriend on one occasion. He is and has been aware of Applicant's romantic relationship with his girlfriend, and the fact that he provides her with financial support. He is also aware of other foreign contacts Applicant has had with other females, be it sexual or otherwise. (Tr. pp 75-87.) He recommends Applicant for a security clearance.

Applicants Year-End Reviews for 2021, 2022, and 2023, are all favorable. Applicant has consistently displayed a positive attitude and an excellent work ethic. (Applicant Exhibits C, D, and E.)

Letters of reference from Applicant's supervisor, and managers who currently or in the past have worked with the Applicant, and an intern Applicant mentored, all testified that Applicant has a strong work ethic, is professional, and has high morals, values, honesty and integrity. His dedication to the mission is exemplary, and his work has consistently been of the highest quality. He has shown unwavering trust and responsibility. Collectively, they recommend Applicant for a security clearance. (Applicant's Exhibits G, H, I, and J.)

In assessing the heightened risk created as a result of Applicant holding a security clearance, the Applicant's ties to a hostile country are important. However, even countries friendly to the United States have attempted to gain unauthorized access to classified information. Under the particular facts of this case, I have taken administrative notice of the information provided concerning the Country of Thailand. Thailand is a constitutional monarchy and a parliamentary democracy. The basic government structure is composed of the executive, legislature, and judiciary branch. The government is headed by a prime minister. Thailand and the U.S. have long been close allies and diplomatic partners. Since World War II, the U.S. and Thailand have

significantly expanded diplomatic, security, and commercial relations and people-to-people ties. The U.S./Thailand alliance benefits both our nations and supports peace and prosperity in the Indo-Pacific. This partnership is bilateral and regional in scope. It is geared towards promoting regional security and prosperity that includes infectious disease prevention treatment and research, combatting emerging pandemic threats, humanitarian assistance for displaced persons, and the promotion of democracy and human rights, among many other interests. Through a five years Strategic Partnership Agreement signed August 2021, USAID programs assist Thailand in trilateral initiatives that include health, environment, economic and social sector development, and human resources development. Since becoming a member of the United Nations in 1946, Thailand has played an active role in many UN-related activities, most notably in peacebuilding and peacekeeping operations. The U.S. and Thailand have longstanding relationships diplomatically, economically, and in security dimensions. Economically, Thailand is the 18th largest trading partner with the US. and they collaborate in many ways. In a 2023 Report to Congress, the US.-China Economic and Security Review Commission reported that Thailand is a member of the China-led Asia Pacific Space Cooperation Organization (APSCO), is a recipient of Chinese Arms, and is one of the top five most frequent military diplomatic partners of the Chinese People's Liberation Army (PLA) with whom they have conducted military exercises. Chinese companies are expanding their presence in Thailand and are circumventing Thai law to secure ownership of local media outlets in an effort to shape the media environment in Thailand. Significant human rights issues reported in 2023 include credible reports of arbitrary arrest and detention, political interference in the judiciary, political prisoners, arbitrary and unlawful interference with privacy; serious restrictions on freedom of expression and media and the use of criminal libel laws; serious restrictions on internet freedom; extensive gender-based violence including domestic or intimate partner violence and sexual violence; among others. The U.S. Department of State has issued a travel advisory for the Yala, Pattani, Narathiwat, and Songkhla Provinces: periodic violence directed mostly at Thai Government interests by a domestic insurgency continues to affect these southernmost provinces. U.S. citizens are at risk of death or injury due to the possibility of indiscriminate attacks in public places. (Applicant's Exhibits A and Q, and Government's HE-1.)

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 to be 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, 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 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 the Applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 (EO) 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 also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for 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 guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

(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; 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant and his Thai girlfriend have been in a long-term relationship for about fifteen years. For most of the relationship, Applicant has provided her with financial support, although the frequency and amount has varied. Applicant's relationship is well known and was never hidden. Now that Applicant is living and working in the U.S. he only travels to Thailand to see her one time a year. When the relationship started, he reported it to his employer, and the fact that he was financially supporting her. Applicant also admitted to being in contact with other women, who are citizens of either Thailand or South Korea, that he occasionally sends money to. These contacts are sporadic, and not close or continuous like his contact with his girlfriend.

Applicant served this country for over 20 years in the U.S. Navy. He was highly decorated and retired as Petty Officer. He has shown a deep and long-standing loyalty to the United States. Based upon the evidence presented, these foreign contacts and unique relationships do not pose a threat or negatively influence Applicant's decision making, impacting the interests and security of the United States. Applicant's contact with these individuals although regular, are infrequent, and not out of the ordinary. These limited contacts pose no undue security risk. Under the circumstances here, the risk-benefit analysis is applicable, and these contacts do not pose a significant security risk to the U.S. government. None of these contacts can manipulate, induce, or influence the Applicant to help a foreign person or government in a way that is inconsistent with the U.S. interests.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

- (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;
- (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; and
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

In this case, Applicant's foreign contacts do not present a security risk to the U.S. government. These foreign contacts, which include his girlfriend, and a few other women from Thailand and South Korea all appear to be limited, casual, and infrequent, and are not likely to result in a situation that may create divided loyalties or allegiance. Applicant is working for a U.S. defense contractor and is committed to its mission. He has shown a deep and longstanding relationship with or loyalties to, the United States. All foreign contacts he has made have been promptly reported to his company supervisor and security officer, and he plans to continue to follow all reporting requirements. He has been open, honest, and candid, about these relationships with the Government during the entire security clearance process. Under the circumstances, his foreign contacts do not present a risk and mitigation under AG ¶ 8(a), 8(b), 8(c), and 8(e) has been established.

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 information.

(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;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, 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. This includes, but is not limited to, consideration of:

(2) any disruptive, violent, or other inappropriate behavior; 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; and

The guideline at AG ¶ 17 contains seven conditions that could mitigate security concerns. One of the mitigating conditions is potentially applicable:

(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.

Applicant denies the inappropriate behavior or misconduct alleged under Guideline E. He admits that the underlying conduct occurred, but not that his behavior was inappropriate. Admittedly, the facts show that Applicant has at times been a difficult person to deal with, and that he does not always get along with everyone, but he does not pose a security risk. Applicant's inappropriate behavior or personality conflict occurred in 2016, over nine years ago. There has been no recent misbehavior of the sort, and he has numerous favorable recommendations from company superiors that consider him to be an outstanding employee. Based upon the record of evidence, I find that Applicant has demonstrated reasonable and responsible judgment and has properly maintained and protected classified information. Accordingly, this guideline is found for the Applicant.

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 Guidelines B and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Under the particular facts of this case, Applicant's connections with Thailand do not pose a significant risk to the U.S. government or raise to the level of being a risk to national security.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Foreign Influence and Personal Conduct security concerns.

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 B: FOR APPLICANT

Subparagraphs 1.a. and 1.b. For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a. through 2.c. For Applicant

Conclusion

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

Darlene Lokey Anderson
Administrative Judge