



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



## **Appearances**

For Government: Sakeena Farhath, Esq., Department Counsel  
For Applicant: *Pro se*

09/02/2025

## Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the sexual conduct security concerns. The personal conduct security concerns were not established. Eligibility for access to classified information is denied.

On January 9, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline D (sexual conduct) and Guideline E (personal conduct). Applicant responded to the SOR on January 23, 2025, and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on March 17, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that he had 30 days from the date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 5, 2025, and he timely submitted a response on June 3, 2025 (FORM Response). The case was assigned to me on August 5, 2025. The Government exhibits included in the FORM, marked as Items 1 through 4, and the FORM Response are admitted in evidence without objection.

## **Findings of Fact**

Applicant is a 61-year-old employee of a government contractor for whom he has worked since October 2021. He received a high school diploma in 1982. He has been married since 1997. He has two adult children and two adult stepchildren. He has undergone multiple investigations for security clearance eligibility and to hold positions of public trust. (Items 3, 4)

From 1998 through the early-1990s, Applicant paid for sexual intercourse from escorts that were advertised in the Yellow Pages on three occasions. He paid the escort about \$300 on each of these occasions. After he married in 1997, he continued to engage in what he ambiguously called these “events.” From the context in which he referenced these “events” in his authenticated August 2022 security interview (SI), these “events” were occasions where he paid individuals money in exchange for sex acts. He continued paying money to individuals in exchange for sex acts after his marriage in 1997 until about 2004, when he had to tell his wife about one of these “events” because he was having trouble paying his bills. He claimed that he did not engage in paying for sex acts again until 2019. In 2019, he began having marital problems and feeling lonely. From then until November 2024, he paid individuals for sex acts approximately 125 separate times at 13 commercial massage parlors in State A. He paid a total of about \$24,500 for these sex acts. The record evidence provides that most, if not all, of these instances where he paid for sex acts occurred in State A, where this conduct is illegal. In his November 2024 responses to interrogatories, he claimed that he has no intention to continue with his illegal sexual conduct. (Items 2, 4)

In response to a question in the Government’s interrogatories about who knew about his illegal sexual conduct, Applicant claimed that he has told two friends about it. In the SI, the investigator wrote that he alleged that he informed his wife about at least some of this illegal sexual conduct in 2004, when he felt obligated to explain to her why he was having financial issues. There is no evidence that his wife knows about any of these illegal sex acts other than the 2004 “event.” There is no evidence that his children or stepchildren know about his illegal sexual activity. There is no evidence that any of his work colleagues know about it, either. A licensed counselor from whom Applicant began receiving treatment in May 2025, likely knows about at least some of this conduct. (FORM Response; Items 2, 4)

Applicant claimed that he twice participated in a course called Conquer Series about overcoming addiction. There is no evidence about when he took this course or the course format. In May 2025, he engaged the services of a licensed counselor who created a treatment plan for him that involved weekly sessions. The treatment plan also contemplated structured sessions with Applicant’s wife. There is evidence that Applicant has undergone two sessions of the treatment program that the treatment plan envisions. There is no evidence that his sessions have involved his wife or of Applicant’s prognosis. (FORM Response; Items 2, 4)

## Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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 national security eligibility will be resolved in favor of the national security."

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." The applicant 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.

Section 7 of 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 D, Sexual Behavior**

The security concern for 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.

AG ¶ 13 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and
- (d) sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

Applicant has engaged in illegal sexual behavior that reflects a lack of judgment, repeatedly over the course of decades. He has not told his wife about the extent of this illegal sexual behavior, which involves paying individuals for sex acts. Her lack of knowledge of his illegal conduct causes him to be vulnerable to coercion, exploitation, or duress. AG ¶¶ 13(a), 13(c), and 13(d) are established.

Conditions that could mitigate sexual behavior security concerns are provided under AG ¶ 14. 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 good judgement;

(c) the behavior no longer serves as a basis for coercion, exploitation, or duress;

(d) the sexual behavior is strictly private, consensual, and discreet; and

(e) the individual has successfully completed an appropriate program of treatment, or is currently enrolled in one, has demonstrated ongoing and consistent compliance with the treatment plan, and/or has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.

Applicant engaged in illegal sexual behavior over one-hundred times during a decades long period. The last time he engaged in it was about eight months ago, a cessation of time which pales in comparison to the duration and frequency of the conduct. I do not find that it is unlikely to recur. AG ¶ 14(b) does not apply.

There is insufficient evidence that Applicant's family and work colleagues are aware of his illegal sexual conduct. This conduct could serve as a source of embarrassment for Applicant and could be used as a basis for coercion, exploitation, or duress. AG ¶ 14(c) does not apply.

It is unclear whether paying an individual for sex acts can be considered consensual, especially without knowing each individual's motivation or the circumstances surrounding their willingness to perform these acts. For example, a person could "agree" to perform these acts for money because they are being coerced by an employer or they are the victims of human trafficking. It is Applicant's burden to show evidence in mitigation. Given these considerations, I find that he has not proven that these illegal sex acts were consented to by the individuals he paid to perform them. AG ¶ 14(d) does not apply.

There is evidence that Applicant is enrolled in an appropriate program of treatment. However, as there is evidence of only attending two counseling sessions and no prognosis, AG ¶ 14(e) does not apply.

## **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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. 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 ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions 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

(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:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations.

SOR ¶ 2 cross-alleges Applicant's illegal sexual conduct and his wife's lack of knowledge of the full extent thereof. These allegations were covered by Guideline D and were sufficient for an adverse determination under that guideline. AG ¶¶ 16(c) and 16(d) are not established.

### **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 have incorporated my comments under Guidelines D and E in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the sexual conduct security concerns under Guideline D. The personal conduct security concerns under Guideline E were not established.

### **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
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Benjamin R. Dorsey  
Administrative Judge