



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



In the matter of: )  
)  
) ISCR Case No. 20-01554  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Patricia M. Lynch-Epps, Esq., Department Counsel  
For Applicant: *Pro se*

08/22/2022

**Decision**

HARVEY, Mark, Administrative Judge:

The allegations in the statement of reasons (SOR) made under Guidelines D (sexual behavior) and J (criminal conduct) are not mitigated. Guideline E (personal conduct) security concerns are refuted. Access to classified information is denied.

**Statement of the Case**

On December 21, 2018, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On April 5, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DCSA CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines D, J, and E.

On April 27, 2021, Applicant responded to the SOR and requested a hearing. (HE 3) On June 1, 2021, Department Counsel was ready to proceed. Processing of the case was delayed due to the COVID-19 pandemic. On May 3, 2022, the case was assigned to me. On June 14, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for July 15, 2022. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered six exhibits, and Applicant offered one exhibit (nine letters). (Transcript (Tr.) 16-19; GE 1-6; Applicant Exhibit (AE) A) There were no objections and all proffered exhibits were admitted into evidence. (Tr. 18-19; GE 1-GE 6; AE A) On July 25, 2022, DOHA received a transcript of the hearing.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

### **Findings of Fact**

In Applicant's SOR response, he admitted all of the SOR allegations. (HE 3) He also provided clarifying, extenuating, and mitigating information. (HE 3)

Applicant is a 40-year-old functional information technology system administrator who has been employed by a DOD contractor since January 2019. (Tr. 5, 8, 28) In 2000, he graduated from high school. (Tr. 5) He has about 50 college credits, and he has not received a degree. (Tr. 5) He is studying for some technical certifications. (Tr. 28) He served in the Air Force from 2000 to 2018, and he received a general discharge under honorable conditions. (Tr. 6) When he left active duty he was a technical sergeant (E-6). (Tr. 26-27) He served in Iraq for four months in 2010. (Tr. 6) He received an Air Force Achievement Medal for his service in Iraq. (Tr. 6) He was married from November 2005 to August 2006, and his second marriage was in 2006. (Tr. 7) He has a 10-year-old child with his current spouse. (Tr. 7; 26-27; GE 1)

In December 2016, Applicant held a security clearance. (Tr. 67) He currently does not hold a security clearance; however, his security manager has authorized him to have access to the Non-classified Internet Protocol (IP) Router Network (NIPR Net). (Tr. 23) His employer has advised him that even if his security clearance is not approved they will attempt to retain him as an employee. (Tr. 28)

### **Criminal Conduct, Sexual Behavior, and Personal Conduct**

SOR ¶ 1.a alleges under Guideline D that Applicant used his cell phone to send nude pictures of his genitalia and engaged in electronic conversations of a sexual nature with a female he believed to be 14 years old. (Tr. 29)

SOR ¶ 2.a alleges under Guideline E that Applicant was administratively discharged from the Air Force in March 2018 for sexual perversions.

SOR ¶ 3.a alleges under Guideline J that Applicant received nonjudicial punishment (NJP) in about July 2017 under Article 80 of the Uniform Code of Military Justice (UCMJ) for attempting to commit a lewd act upon a child by intentionally exposing his genitalia via communication technology to a person he believed to be 14 years old, but had not attained the age of 16 years. SOR ¶ 3.b cross alleges the conduct set forth in SOR ¶ 1.a.

In 2016, Applicant was depressed after returning to the United States from Korea, and he was having problems in his marriage. (Tr. 30; GE 3 at 3) On about 10 occasions over a three to four-month period, he surfed the Internet with his cell phone looking for dating opportunities and because of curiosity. (Tr. 31, 32-33)

On or about December 14, 2016, Applicant located and responded to an advertisement about dating and sexual encounters. (Tr. 29-30) He was 34 years old in December 2016. (Tr. 37) After about 10 emails back and forth over several hours, the person (Ms. C) advised Applicant that she was 14 years old. (Tr. 36) Applicant said he “replied, no, you’re not. [H]e just didn’t believe” Ms. C. (Tr. 36) He wanted proof of Ms. C’s age, and he engaged in commentary back and forth with Ms. C about her age. (Tr. 36) Eventually, he came to believe Ms. C was actually 14 years old. (Tr. 44) He never communicated with Ms. C over the telephone. (Tr. 36) He knew sexual communications with an underage person was illegal. (Tr. 37) He expressed concern to Ms. C about being discovered. (Tr. 38) Despite this concern, he communicated about sexual matters to Ms. C, a female he believed to be 14 years old, because of his fantasy. (Tr. 38; GE 6) He could not or would not disclose details about the fantasy at his hearing. (Tr. 38-39, 66) He never disclosed details about the fantasy to anyone; however, he denied that his fantasy was to engage in sexual relations with a 14-year-old girl. (Tr. 38)

Applicant requested that Ms. C send him nude pictures of herself including her genitalia. (Tr. 40, 44) Ms. C did not send him any pictures; however, he sent her three pictures of himself: one of his face, and two of his genitalia. (Tr. 40-41) He was unsure whether she asked for the pictures. (Tr. 64) He sent one picture of his genitalia after he learned Ms. C was 14 years old. (Tr. 41) In emails, he offered to teach Ms. C how to perform various explicit sexual acts. (Tr. 43; GE 6) He provided Ms. C with information about websites for the purpose of having her view pornographic videos. (Tr. 44; GE 6) He denied that he suggested that Ms. C go to any Internet sites containing child pornography. (Tr. 63-64) He also offered to perform sex acts on Ms. C, and he requested that she perform sex acts on him. (Tr. 43; GE 6) He said exceptionally gross things to Ms. C about what he wanted to do with his bodily fluids. (GE 5; GE 6) Applicant asked Ms. C to meet him during the day where they could be alone because he was worried about being caught by law enforcement. (Tr. 43; GE 6)

On December 29, 2016, an Air Force investigator interviewed Applicant about his communications with Ms. C, and he admitted the allegations. (Tr. 46, 61; GE 6) The investigators examined his computer and cell phone for evidence. (Tr. 53, 64) The investigators retained his cell phone, and there has not been any allegation that Applicant viewed child pornography. (Tr. 64)

Applicant said he did not propose a place to meet with Ms. C, and he insisted that he was not really going to engage in sex with her. (Tr. 65) He said:

Because I wasn't going to do anything like that. Honestly, I thought somebody was messing with me at that time. So, I didn't want, for one, I couldn't do that. That's sick, twisted, and I don't even know why I went as far as I did. But to actually go and meet somebody and do something like that, no, I can't do that. (Tr. 62-63)

In about July 2017, Applicant received NJP under Article 80, UCMJ, for attempting to commit a lewd act upon a child by intentionally exposing his genitalia via communication technology to a person he believed to be 14 years old, but had not attained the age of 16 years. (Tr. 56-58; GE 5 at 4) He admitted the conduct and offense alleged in the NJP. (Tr. 58) The commander imposed a reduction in grade to staff sergeant (E-5), forfeiture of one half of one month's pay for two months, and a reprimand. (Tr. 58; GE 5) The commander who imposed the NJP recommended that Applicant be allowed to remain in the Air Force; however, the next commander wanted to discharge him. (Tr. 59) In March 2018, the Air Force administratively discharged him from the Air Force for misconduct, specifically sexual perversions. (Tr. 52, 60) The conduct that was the basis of the discharge is detailed above. (Tr. 53)

Applicant disclosed the conduct described above to his spouse, in-laws, and employer. (Tr. 53-55) Applicant received counseling from a therapist with experience counseling and treating pedophiles. (Tr. 47) He was unsure about her credentials; however, he believed she was a mental-health professional and possibly a social worker, psychologist, or psychiatrist. (Tr. 47) She advised Applicant that he did not meet the criteria for pedophilia. (Tr. 47-48) She did not provide a letter indicating her diagnosis or prognosis.

Applicant also received counseling for depression, anxiety, and ADHD issues through the Department of Veterans Affairs. (Tr. 26) He received Wellbutrin for a month or two to treat his depression; however, he did not like the side effects and he stopped taking it. (Tr. 49-50) Applicant and his spouse participated in marital counseling. (Tr. 48, 50) He attended a five-day counseling and education session with his spouse. (Tr. 26, 50) He believed the marital counseling was helpful and effective. (Tr. 50) He also received financial counseling. (Tr. 51)

Applicant said:

I am incredibly sorry for my actions during that time. I've gotten deep within my church. Right now I'm one of the youth leaders. My wife and I, we do kids youth ministry. . . . I've done everything I can to try to get help that way this can be resolved. I can't believe I did this. I'm now doing whatever I can to show that this isn't me. The paperwork and stuff, the things that I did, this isn't me. (Tr. 26)

Applicant loves his country and regrets his misconduct. (HE 3) He is doing everything he can to show he is rehabilitated and deserves a security clearance. (*Id.*)

### **Character Evidence**

Applicant provided statements from nine character witnesses, including his mother-in-law, father-in-law, supervisor, pastor, friends, and coworkers, one of whom also made a statement at his hearing. (Tr. 20-24; AE A) The general sense of the recommendations is that Applicant shows courtesy, professionalism, honesty, sincerity, trustworthiness, diligence, and reliability. He has a law-abiding character. His character evidence letters support approval of his access to classified information.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from

being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Criminal Conduct**

AG ¶ 30 describes the security concern about criminal conduct, “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.”

AG ¶ 31 lists one condition that could raise a security concern and may be disqualifying in this case: “(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.”

In December 2016, Applicant admitted to an Air Force investigator that he sent a picture of his genitalia to and solicited a sex act from Ms. C, a person he believed to be 14 years old. In about July 2017, his commander found in an NJP proceeding that he violated Article 80, UCMJ, by attempting to commit a lewd act upon a child by intentionally exposing his genitalia via communication technology to Ms. C, a person he believed to be 14 years old, but had not attained the age of 16 years. AG ¶ 31(b) is established.

AG ¶ 32 describes four conditions that could mitigate security concerns including:

(a) so much time has elapsed since the criminal 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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense;  
and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant presented some important mitigating information. The criminal offense is not recent. Almost six years have elapsed without evidence of recurrence of criminal activity. He received job training and counseling; he obtained higher education by working on information technology certifications; and he has an excellent employment record.

After careful assessment of Applicant's case in mitigation, I conclude there is substantial reliable evidence of record that in December 2016, Applicant committed the offense of attempting to commit a lewd act upon a child by intentionally exposing his genitalia via communication technology to Ms. C, a person he believed to be 14 years old, but had not attained the age of 16 years. At some point during his communications with Ms. C, he specifically intended to commit a lewd act upon a child, Ms. C.

Applicant's claims that he did not intend to commit a lewd act upon Ms. C are not credible. The offense itself shows a serious lapse of judgment. In addition, his comments at his hearing about his lack of intent to engage in a sex act with Ms. C in December 2016 were not credible and raise questions about his rehabilitation. ISCR Case No. 20-01577 at 3 (App. Bd. June 6, 2022) (citing ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (listing the purposes for which non-alleged conduct can be considered)).

While his offense in December 2016, is not recent, there is insufficient proof of rehabilitation, and he did not accept fully responsibility for his offense. The totality of

circumstances continues to cast doubt on his reliability, trustworthiness, and good judgment. Criminal conduct security concerns are not mitigated.

## **Sexual Behavior**

AG ¶ 12 describes the security concern arising from sexual behavior as follows:

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 lists conditions that could raise a security concern and may be disqualifying as follows:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (b) pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop;
- (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.

In December 2016, Applicant attempted to engage in a sex act with Ms. C, a person he believed was 14 years old. He communicated lewd language to her about engaging in sex acts with him. He sent her a picture of his genitalia after she advised him she was 14 years old. AG ¶¶ 13(a) and 13(d) are established. AG ¶ 13(c) applies because at the time of the offense, he did not want his family, employer, and security officials to be aware of his criminal sexual behavior. AG ¶ 13(b) does not apply because Applicant is able to control his sexual behavior.

AG ¶ 14 lists conditions that could mitigate security concerns including:

- (a) the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;



(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;

(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 presented some mitigating information and AG ¶¶ 14(b), 14(c), and 14(e) partially apply. His attempted sex act with a 14-year-old occurred in December 2016, occurred on a single occasion, and is thus, infrequent. There is no evidence that he has sought sex from minors before or after December 2016, and the offense is not recent. He received some counseling, and a mental-health practitioner advised him that he was not diagnosed with pedophilia, which is evidence he would not commit future sexual offenses. However, he did not provide a letter from his treating therapist indicating a positive diagnosis or prognosis.

The evidence against mitigation is more persuasive. As indicated in the Criminal Conduct section, *supra*, Applicant was equivocal at his hearing about his mental state when he committed the offense, and this shows a lack of full rehabilitation. His sexual offense in December 2016, and his claim at his hearing that he did not intend to complete the sex act with Ms. C continue to cast doubt on his reliability, trustworthiness, and good judgment. Sexual behavior security concerns are not mitigated.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

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 SOR alleges three disqualifying conditions in AG ¶ 16 that are relevant in this case. AG ¶¶ 16(c), 16(d)(3), and 16(e)(1) provide:

(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 person may not properly safeguard classified or sensitive information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations; 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, may affect the person's personal, professional, or community standing . . . .

Applicant engaged in criminal sexual conduct in December 2016 which is sufficient for an adverse determination under Guideline J. AG ¶¶ 16(c) and 16(d) are not established. Applicant's spouse, in-laws, employer, law enforcement, and security officials are aware of his history of criminal activity. AG ¶ 16(e) is not established. The SOR under Guideline E indicates that the Air Force administratively discharged him for the criminal conduct alleged under Guideline J, and this disposition information does not add any disqualifying information. It is the underlying conduct, not the disposition information that raises security concerns. Personal conduct security concerns are duplications of security concerns addressed under other guidelines, and they are refuted.

### **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(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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guidelines D, J, and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 40-year-old functional information technology system administrator who has been employed by a DOD contractor since January 2019. He has about 50 college credits, and he has not received a degree. He is studying for some technical certifications. He served in the Air Force from 2000 to 2018, and he received a general discharge under honorable conditions. When he left active duty he was a technical sergeant. He served in Iraq for four months in 2010. He received an Air Force Achievement Medal for his service in Iraq.

Applicant provided statements from nine character witnesses. The general sense of the recommendations is that Applicant shows courtesy, professionalism, honesty, sincerity, trustworthiness, diligence, and reliability. He has a law-abiding character. His character evidence letters support approval of his access to classified information.

The evidence against mitigation is more convincing. In December 2016, Applicant attempted to engage in a sex act with Ms. C, a person he believed was 14 years old. He communicated lewd language to her about engaging in sex acts with him. He sent her a picture of his genitalia after she advised him she was 14 years old. He received NJP for attempting to commit a lewd act upon a child, Ms. C, in violation of Article 80, UCMJ. At his hearing, he falsely denied that he actually intended to engage in a sex act with a 14-year-old girl. He is not accepting full responsibility for his criminal conduct. He is not fully rehabilitated.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Criminal conduct and sexual behavior security concerns are not mitigated. Personal conduct security concerns are refuted.

## 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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraphs 3.a and 3.b:	Against Applicant

## Conclusion

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

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Mark Harvey  
Administrative Judge