



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-02598
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Andrew Henderson, Esquire, Department Counsel

For Applicant:  
*Pro se*

October 20, 2023

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**Decision**

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GLENDON, John Bayard, Administrative Judge:

Applicant has not mitigated the security concerns raised under Adjudicative Guidelines D (Sexual Behavior) and E (Personal Conduct). National security eligibility for access to classified or sensitive information is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaires for Investigations Processing on February 4, 2022 (e-QIP). On February 6, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines D and E. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

(January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within DoD after June 8, 2017.

Applicant responded to the SOR on March 1, 2023, (Answer) and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on April 14, 2023. The case was assigned to me on April 25, 2023. DOHA issued a Notice of Hearing on June 12, 2023, scheduling the case to be heard via video teleconference on July 19, 2023.

I convened the hearing as scheduled. Department Counsel presented Government Exhibits (GE) 1 through 3, which I admitted without objection. Applicant testified on his own behalf. I kept the record open until August 2, 2023, to permit Applicant to supplement the record with documentary evidence. He timely submitted six exhibits marked as AE A through F, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 26, 2023. (Tr. at 10-12.)

### **Findings of Fact**

Applicant is 55 years old. He has been married for 31 years and has an adult child. He received his high school diploma in 1986 and a bachelor's degree in 1993. In January 2022, he began working for his current employer, a U.S. Government contractor, as a scheduler. Since 2006 he has also worked as a lecturer at the university where he received his bachelor's degree. He is seeking national security eligibility for the first time in connection with his employment. (Answer at 1-2; Tr. at 15-16; GE 1 at 10-11, 18-19, 22, 35.)

#### **Paragraph 1 - Guideline D, Sexual Behavior**

#### **Paragraph 2 – Guideline E, Personal Conduct**

Under Guideline D (SOR ¶¶ 1.a, 1.b) and cross-alleged under Guideline E (SOR ¶ 2.a), the Government alleged two incidents of inappropriate sexual conduct, both with teenage female foreign exchange students. In SOR ¶ 1.a, the Government alleged that Applicant is ineligible for clearance because of his past sexual behavior with regard to a young foreign-exchange student. The SOR also alleged that in 2008 Applicant had an extramarital affair with an 18-year-old female whom he had previously hosted as a foreign exchange student. (SOR ¶ 1.b). In his Answer, Applicant admitted both allegations with explanations. (Answer at 1-2.)

SOR ¶ 1.a. The main allegations in this subparagraph are that in 2010 Applicant inappropriately touched a minor female and entered her bedroom in his house without permission. At the hearing, Applicant admitted that he hosted the 17-year-old foreign exchange student (the Complainant) in his home and that she was removed after about seven weeks due to her complaints about his behavior. He denied that he engaged in any misconduct. He admitted that the Complainant asked to be moved to a new family and was removed from his home by the foreign exchange coordinator. She made this request

due to complaints about Applicant that he characterized as “unfounded.” The Complainant made her claims with the local police and the police investigated. Applicant testified that he cooperated with the police, and the police took no action. (Tr. at 17-18.)

The Complainant submitted her charges to the police the day she moved out of Applicant’s house. The police prepared an extensive report (GE 3). The report states that she felt “very uncomfortable around [Applicant].” Her first complaint was that Applicant stared at her body in a sexual manner. She reported that on a trip to an amusement park with Applicant, his son, and a friend of the son, Applicant made inappropriate comments to her about her body. Also, she went on a water ride wearing a white jumpsuit and got wet, which made her outfit transparent revealing her body and undergarments. She claimed Applicant tried to take a picture of her in that condition. She also complained that while swimming at the amusement park, he would swim underwater and grab her legs and stomach. (GE 3 at 1.)

The police report contains numerous other complaints about Applicant’s actions directed at the Complainant. She reported that he often would enter her bedroom unannounced. He would lie on her floor, or on occasion, he would lie down next to her on her bed to talk. He also tickled her almost daily. She also claimed that he once grabbed her buttocks. On one occasion, she walked out of her bathroom and observed Applicant standing naked in front of his bedroom door. She complained that Applicant would frequently tap her on the buttocks with his hand or foot. She commented to the police that Applicant is very friendly, but she was scared that “he will take it to the next level.” She reported to the police that Applicant’s wife was “very distant” and did not interact with her at all. She felt so uncomfortable with Applicant’s behavior that she called her parents, and they arranged for her to be removed from Applicant’s home and relocated to another host. She lived at Applicant’s home from August 10, 2010, to September 17, 2010. The SOR incorrectly alleged that Applicant’s sexual misconduct occurred in 2011. The Complainant’s parents refused to permit their daughter to participate in a “pretext call” proposed by the police to try to have Applicant say something incriminating to confirm her allegations. They advised the police that their daughter was happy with her new host, and they did not want her to be further involved with Applicant out of concern it would upset her more. The police report concludes that the case was referred to the District Attorney’s office for their review for possible criminal charges against Applicant for annoying or molesting a child. (GE 3 at 3-4, 6-7, 9-10, 12-13, 16.)

At the hearing, Applicant denied all of the most serious allegations made by the Complainant. He admitted, however, he did grab her leg while swimming under water at the amusement park, just as he did with his son and the son’s friend. He also admitted that on one occasion he sat at the end of her bed and another time laid down on the floor to talk with her. On another occasion, he claimed that while he was in her room, she invited him to lie on top of the covers of her bed while they talked. On cross-examination, he admitted that this occurred at least twice, but he said she was under the bed covers. He acknowledged that he made a mistake by retrieving a towel from a hallway closet while he was unclothed after a shower. He later learned that she saw him from the rear.

He thought he was being discreet and was careful to avoid being seen. He also admitted that he hugged her as well others in his family and one time when she was sick, he gave her medicine and kissed her on the forehead. He also wrestled with her standing up as he did while playing with his son. Applicant testified that he thought he had a good relationship with her and was surprised when she made her complaints to the police. He believes she misinterpreted certain events when she lived in his home, and he asserted that he never touched her in an inappropriate way. He also claimed that the Complainant was removed from other host homes due to causing problems during her nine-month exchange student status in the United States. He also falsely stated that after he spoke to the police, the police determined that the Complaint's claims had no merit and dismissed the matter. On cross-examination, he acknowledged that he was never told by the police that the Complainant's charges had no merit. He also noted that his family hosted seven exchange students over seven years, two of which were females, the Complainant and an exchange student with whom he had an extramarital affair in 2008 after her exchange year had ended and she had turned 18 years old. (SOR ¶ 1.b, below) (Tr. at 18, 20, 22-24, 30-34, 39-40.)

SOR ¶ 1.b. The Government alleged in this subparagraph that in 2008 Applicant had an 18-month extramarital affair with an 18-year-old German woman (the German Student), who had been hosted by Applicant as a foreign exchange student in 2006-2007. She was 16 or 17 years old at that time. Applicant acknowledged that he treated this student with similar physical behaviors of touching and hugging during her school year living at Applicant's home. Applicant admitted this allegation in the Answer but noted that the affair occurred 15 years ago and was not criminal in nature, presumably because of her age at that time. At the hearing, Applicant argued that the affair was private, consensual, and discreet. She was 18 years old, and he was 42. He acknowledged that the affair was wrong and asserted he has not done anything similar since then. He explained that they had remained in contact after her exchange student school year. In 2008 the German Student returned to visit Applicant, and she initiated an affair with him. She only stayed in the United States for four weeks, but they continued the relationship through electronic communications until 2010. (Answer at 2; Tr. at 26-28, 34-36; GE 2 at 7.)

Applicant testified that he ended the relationship with the German Student after six months because he felt what he was doing was wrong. He claimed that he told his wife some years later about it in the spirit of being honest with his wife. His disclosure of the affair occurred sometime after the Complainant's allegations (SOR ¶ 1.a). In his responses to DOHA's interrogatories, Applicant noted that the disclosure of the affair to his wife was in about 2014. He last communicated with the German Student in February 2021. She also sent him birthday greetings in July 2022 or 2023. (Tr. at 36-44; GE 2 at 7.)

## **Whole-Person Evidence**

Applicant submitted two performance reviews and four character-reference letters. The work evaluations state that Applicant is an invaluable member of his team and that he was a “Successful Performer.” His character references praised Applicant’s strong work ethic and friendly personality. They also remarked about his sound judgment. His church minister commented that Applicant has a strong marriage and is a man of faith. Two close friends wrote about Applicant’s integrity and sound values. (AE A through F.)

## **Policies**

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Paragraph 1 (Guideline D – Sexual Behavior)**

¶ 12: The security concern relating to the guideline for Sexual Behavior is set out in AG

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 13. Two conditions are potentially applicable in this case:

(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.

The record evidence of Applicant's conduct with a 17-year-old foreign exchange student, who was entrusted in his care as a host, was substantial, credible evidence of behavior of a sexual nature so as to render the term "sexual behavior" in AG ¶ 13(c) and 13(d) applicable. The evidence supports a conclusion that Applicant's sexual behavior with both the Complainant and the German Student causes him to be vulnerable to coercion, exploitation, or duress. The evidence of Applicant's sexual behavior with the Complainant and the German Student also reflects a serious lack of judgment. His behavior establishes both AG ¶¶ 13(c) and 13(d) as does the overall pattern of Applicant's sexual behavior with the two young females.

Accordingly, the burden of persuasion shifts to Applicant to mitigate the security concerns raised by his actions. The following three mitigating conditions under AG ¶ 14 are possibly 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.

AG ¶ 14(b) is only partially established. Applicant's sexual behavior established by the record evidence happened a number of years ago. However, the overall pattern of his behavior makes it difficult to conclude that other misconduct of a sexual nature with young females would be unlikely to recur. Moreover, Applicant's sexual behavior casts doubt on his current reliability, trustworthiness, or judgment.

AG ¶ 14(c) is not established. Applicant's denial of any misconduct with the Complainant is not credible in light of the very unusual conduct he acknowledges. His behavior is even more concerning because he only knew her for a brief period when his troubling interactions began. Applicant provided no corroborating evidence from his wife to indicate that she knows the full extent of his misconduct with the Complainant or Applicant's 18-month affair with the German Student and his more recent contacts with her. Based on the record evidence, the Complainant, her parents, and the German Student are potentially in positions to assert coercion and duress against Applicant.

AG ¶ 14(d) is only partially established. Applicant's conduct of a sexual nature with the Complainant was not consensual because she was a minor at the time. Also, some of the behavior she complained about occurred in front of Applicant's son and was therefore public and not discreet. On the other hand, Applicant's sexual affair with the German student was private, consensual, and discreet.

The quality of Applicant's mitigating evidence did not fully address the seriousness of the security concerns raised by the record evidence under Guideline D. Overall, Applicant failed to carry his burden to establish mitigation under this guideline.

## **Paragraph 2 - Guideline E, Personal Conduct**

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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.

AG ¶ 16 sets forth the following condition that could raise security concerns and may be disqualifying in this case:

(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.

AG ¶ 16(e)(1) is established. Applicant's conduct could affect his personal, professional, and community standing if known. This renders him vulnerable to exploitation, manipulation, or duress by others, including a foreign intelligence entity. The evidence also supports a conclusion under AG ¶ 15 that Applicant's conduct involves questionable judgment that raises questions about his reliability, trustworthiness, and ability to protect classified or sensitive information. He was entrusted with the wellbeing of two young girls far from their homes and parents, and he abused his fiduciary responsibility to them. Security concerns under ¶ 15 have been established.

Accordingly, the burden of persuasion shifts to Applicant to mitigate the security concerns raised by his actions. The guideline includes the following two conditions in AG ¶ 17 that could mitigate the security concerns arising from Applicant's misconduct:

(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

(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's offenses are not minor, though they happened many years ago. As noted above, the repeated nature of the misconduct (or at least poor judgment) does not permit a conclusion that additional similar misconduct with young girls or young women is unlikely to recur. Moreover, his offenses cast doubt on his reliability, trustworthiness,



and good judgment. Applicant failed to carry his burden to establish mitigation under AG ¶ 17(c).

Applicant has also not established mitigation under AG ¶ 17(d) because he has not fully acknowledged his misconduct and poor judgment and has not obtained counseling. Although he is no longer hosting foreign exchange students, there is always the risk that he might engage in future similar misconduct with other teenagers.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case, including the whole-person factors quoted above. I have weighed the fact that Applicant's behavior occurred a number of years ago. I have also given significant weight to what I conclude was predatory behavior directed at two young females by Applicant, a much older man in a position of power, authority, and fiduciary responsibility. Applicant submitted noteworthy character evidence, but overall, he has not provided sufficient evidence to mitigate the security concerns raised by his conduct with the Complainant and the German Student. Applicant has expressed little or no regret for his actions, and I cannot conclude that such behavior directed at young women or teenage girls will not recur. Overall, the record evidence raises questions and doubts as to Applicant's suitability for national security eligibility and a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ 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:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

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

JOHN BAYARD GLENDON  
Administrative Judge