



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



In the matter of:

ISCR Case No. 24-01122

Applicant for Security Clearance

Appearances

For Government:
Rhett E. Petcher, Esquire, Department Counsel

For Applicant:
Pro se

03/27/2025

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant has not mitigated the security concerns raised under the sexual behavior and criminal conduct adjudicative guidelines. Personal conduct security concerns are resolved on the grounds that they are duplicative. National security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions on July 24, 2023 (the 2023 Questionnaire). On September 17, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline D (Sexual Behavior), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct). 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 (AG) effective within DoD after June 8, 2017.

On October 1, 2024, Applicant responded to the SOR (Answer). He requested that his case be decided on the written record in lieu of a hearing. (Item 1 at 10.) In his Answer, he admitted the two Guideline D allegations and provided information in mitigation. He also submitted two documents. He denied the allegations under Guidelines J and E.

On December 10, 2024, Department Counsel submitted the Government's written case. A complete copy of the file of relevant material (FORM), consisting of factual statements and arguments supported by nine attached documents, identified as Items 1 to 9, was provided to Applicant. He received the FORM on December 20, 2024. He responded to the FORM in a document, dated January 19, 2025, which included 12 attached exhibits (Response). I marked Applicant's FORM exhibits as Applicant's Exhibits (AE) 1 through 12. As discussed below, Department Counsel objected to AE 11. The case was assigned to me on March 4, 2025. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Evidentiary Rulings

Department Counsel objected to the admissibility of AE 11 offered by Applicant. The exhibit is a news analysis published online on the subject of security clearances for senior U.S. Government officials. Department Counsel objected on the ground of relevance. His objection is appropriate, and I sustain the objection. Applicant's other FORM Exhibits (AE 1 through 10 and AE 12) are admitted without objection.

In his FORM, Department Counsel offered an exhibit, identified as Item 5. Item 5 is a Report of Investigation prepared by an investigator on behalf of the U.S. Office of Personnel Management summarizing Applicant's Personal Subject Interview conducted on November 22, 2021. Department Counsel advised Applicant in the FORM in solid caps and bold print letters immediately below a description of the Item that he has the right to comment on the accuracy of the summary in a response and provide corrections and updates to make the report clear and accurate. He also advised Applicant that he can object to the Item as lacking an authenticating witness. Department Counsel further commented that if no objections were raised in a response, the Administrative Judge may determine that Applicant has waived any objections to the admissibility of the Item 5 and may consider the summary as evidence in Applicant's case.

Applicant made no comments about and raised no objections to the admissibility of Item 5 in the Response. I regard Applicant's silence on this subject in the Response to be a waiver of any objections he may have, and I will consider Item 5 as evidence admitted into the record. I note that much of facts set forth in Item 5 are duplicated in

other admitted documents. I also admit the eight other Items attached to the FORM as properly admissible documents.

Findings of Fact

Applicant is 42 years old, and since October 2022, he has been employed as an engineer by a U.S. Government contractor. He previously worked for a different Government contractor (Contractor A) from March 2017 to August 2022. He received a bachelor's degree in 2007 and a master's degree in 2019. Applicant married in May 2024, and as of August 2024, he and his wife were expecting the birth of their first child. (Item 2 at 5,12-13, 14-15; Item 4 at 3.)

Applicant was initially granted a Secret security clearance in or about January 2018 when he worked for Contractor A. As a result of a criminal investigation of Applicant's conduct, discussed below, the DCSA suspended his clearance in May 2021. Contractor A then asked Applicant to submit a new questionnaire (the 2021 Questionnaire) to have his clearance status adjudicated. The 2021 Questionnaire allowed Applicant's employment to continue in an unclassified position with the possibility of regaining his clearance. However, Applicant's employment terminated in August 2022 when his unclassified contract was completed. The 2021 Questionnaire did not result in a completed investigation and adjudication. At the request of his current employer, Applicant submitted the 2023 Questionnaire so that he could receive a full adjudication of his national security eligibility. This proceeding followed.

SOR Paragraph 1, Guideline D (Sexual Behavior)

The Government alleged that Applicant is ineligible for a security clearance as a result of his involvement with child pornography. I find that the following facts based upon the documentary record, including the Answer:

1.a Received, Downloaded, and Shared with Others Child Pornography Images (April through September 2020). In 2020, Applicant participated in an online messaging group that traded massive .zip files containing 100's or 1000's of pornographic images. After receiving and trading these files with other members of the group, he claims that he discovered that some of the files contained sexually explicit images of minors. He admits that he knew that the files were illegal, because he engaged in discussions with group members about the files. Rather than stop his file trading and report this conduct to authorities, Applicant continued to trade or distribute the files, seeking out ever larger .zip files. He did this despite knowing that the files he was receiving and sharing contained both illegal and sexually exploitive material involving minors. Applicant claims that he deleted the file-sharing application due to concern about the nature of the files or the discussions of other group members. Applicant claimed that he was only sexually

interested in the images of adult women, not the minors. (Item 3 at 39, and Item 4 at 7-8; Item 5 at 2.)

1.b. December 2020 Arrested and Charged with Three Felony Counts of Sexual Exploitation of Minor. In September 2020, the local police searched his home because his IP address had been captured during surveillance of the messaging group. Police discovered forensic evidence of about nine sexually explicit photographs of children under the age of 15 on Applicant's devices. In December 2020, Applicant turned himself in to the authorities. He was charged with three felony counts of exploitation of a minor. Applicant reported the arrest to his supervisor at Contractor A, but did not report the serious nature of the conduct to her, nor did he inform his work colleagues about his legal issues. (Item 4 at 10-11.)

In October 2021, Applicant entered into a plea bargain and pleaded guilty to one of the original felony counts, Sexual Exploitation of a Minor. He also pleaded guilty to Attempted Sexual Exploitation of a Minor, which was also a felony. He was sentenced to 15 years of supervised probation and was required to register as a Sex Offender for life. Applicant will remain on probation until 2036, unless released early. (Item 4 at 9; Item 9 at 11.)

SOR Paragraph 2, Guideline J (Criminal Conduct)

2.a. SOR Subparagraphs 1.a and 1.b Cross-Alleged. See findings for the referenced allegations, above.

SOR Paragraph 3, Guideline E (Personal Conduct)

3.a. SOR Subparagraphs 1.a and 1.b Cross-Alleged. See findings for the referenced allegations, above.

Mitigation

I have carefully reviewed Applicant's six-page FORM Response and each of the 11 admitted exhibits. I note that Applicant has accepted full responsibility for his actions and claims that he is in full compliance with the terms of his probation. One of his probation requirements is that he engages in group counselling. He writes that he has actively participated in the group sessions. He said in October 2023 that he was close to completing that requirement. In addition, Applicant is voluntarily engaged in therapy with a Licensed Clinical Social Worker. The therapist wrote in a letter that Applicant is addressing in therapy his mental health issues that lead him to engage in behavior involving impaired judgment. Applicant also asserts that his wife is fully aware of his

crimes, convictions, and probation. (Response at 3; Response Ex. 7 at 1; Response Ex.8; Item 4 at 8.)

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)

The security concerns relating to the guideline for sexual behavior are set out in AG ¶ 12, which states:

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 the following four conditions that could raise security concerns and may be disqualifying in this case:

- (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.

AG ¶ 13(b) has not been fully established because Applicant has shown that he is able to stop his compulsive, self-destructive, and high-risk sexual behavior, at least while he is on probation. The record evidence, however, clearly establishes the potentially

disqualifying conditions set forth in AG ¶¶ 13(a), 13(c), and 13(d). The burden, therefore, shifts to Applicant to mitigate the security concerns raised by his sexual behavior.

The guideline includes the following four conditions in AG ¶ 14 that could mitigate the security concerns arising from Applicant's sexual behavior:

- (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's sexual behavior was not so long ago that it no longer casts doubt on Applicant's current reliability, trustworthiness, or judgment. The fact that he is presently serving a sentence of supervised probation that will continue for many years supports this conclusion. The nature of Applicant's behavior and the crimes of which he was convicted will continue to serve as a basis for coercion, exploitation, or duress for years to come. Lastly, the behavior occurred in a public online group and therefore was not private or discreet. Moreover, his behavior vis-à-vis the victims of his crimes, the minor children, was not consensual, practically or legally. None of the mitigating conditions have been established.

Paragraph 2 - Guideline J (Criminal Conduct)

The security concerns relating to the guideline for criminal conduct are set out in AG ¶ 30, which states:

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 describes the following three conditions that could raise security concerns and may be disqualifying in this case:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
- (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; and
- (c) individual is currently on parole or probation.

The record evidence fully supports the application of the above potentially disqualifying conditions. Accordingly, the burden shifts to Applicant to mitigate the security concerns raised by his criminal conduct.

The guideline includes the following two conditions in AG ¶ 32 that could mitigate the security concerns arising from Applicant's criminal conduct:

- (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; 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.

As concluded under a similar mitigating condition in AG ¶ 14(b), above, Applicant's criminal behavior did not occur so long ago that it no longer casts doubt on his reliability, trustworthiness, or good judgment. Applicant has presented evidence of rehabilitation, including the absence of any additional criminal activity and compliance with the terms of his probation. He has not, however, provided documentation from his current employer or Contractor A attesting to a good employment record nor has produced evidence of constructive community involvement. Neither of the quoted mitigating conditions have been fully established.

Paragraph 3 - 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:

(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.

SOR ¶ 3.a is merely an additional cross-allegation under Guideline E of conduct already alleged under Guideline D. AG ¶ 16(c) is not established, as it requires “credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline. . . .” (Emphasis added.) The personal conduct general concern (AG ¶ 15) and the whole-person analysis below are established, given that Applicant’s criminal conduct evidences his questionable judgment, untrustworthiness, and unwillingness to comply with rules and regulations. However, since the conduct is independently addressed under other guidelines, as discussed above, I consider the personal conduct cross-allegation to be duplicative, and I find SOR ¶ 3(a) for Applicant solely on that basis.

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 above whole-person factors and the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I credit Applicant's honesty in all of his admissions to the Government about his arrest and conviction in his questionnaires and background interviews, although that occurred after his security clearance had been suspended following his arrest. I note that since he waived his right to a hearing, I was unable to observe Applicant's demeanor and assess his credibility. He has been convicted of serious crimes against the interests of innocent children. These crimes are widely viewed as offensive to society. He avoided a jail sentence with his plea bargain, but he is on probation until 2036 and will be a registered sex offender for the rest of his life. While the personal conduct security concerns are resolved as largely duplicative, Applicant has not, at this time, mitigated the sexual behavior and criminal conduct security concerns raised by his behavior. Overall, the record evidence leaves me with 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 J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For 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 Applicant national security eligibility. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge