



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



In the matter of:)
)
) ISCR Case No. 25-00026
)
)
 Applicant for Security Clearance)

Appearances

For Government:
Aubrey De Angelis, Esquire, Department Counsel

For Applicant:
Sean D. Rogers, Esquire, Applicant's Counsel

12/10/2025

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On March 27, 2025, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines D, E and J. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on May 29, 2025, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on July 21, 2025. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 12, 2025, scheduling the hearing for November 18, 2025. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 and 2, and requested administrative notice of two relevant state statutes. GXs 1 and 2 were admitted without objection, and such administrative notice was taken. Applicant testified on his own behalf, as did his parents. Applicant submitted 20 exhibits, marked Applicant Exhibit (AppXs) A through T, which were admitted without objection. The record then closed. DOHA received the transcript of the hearing (TR) on December 3, 2025.

Findings of Fact

Applicant admitted all of the allegations in SOR, except for ¶ 1.d. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 25-year-old employee of a defense contractor. He has been employed with the defense contractor since August of 2023. Applicant has a bachelor's degree, is not married, and has no children. (GX 1 at pages 5, 9~10 and 18.)

Guideline D - Sexual Behavior, Guideline E - Personal Conduct & Guideline J - Criminal Conduct

1.a.~1.c., 2.a. and 3.a. When Applicant was 16 and 17 years old, he had improper sexual relations with his younger, adopted sister on four separate occasions, between January 2017 and January of 2018. As a result, in October of 2018, he was charged with four felony counts of sexual assault on a child, and with one felony count of enticement of a child. After the incidents were disclosed, Applicant went to live with his grandparents. His parents testified that they gave their adopted daughter the power to be in charge of any possible reconciliation between the two siblings. They have, in part, reconciled as evidenced by a "Victim Impact Statement," from his sister who was then attending "boot camp" with the U.S Army. Applicant successfully completed all required therapy; and as a result; in February of 2020, the charges against him were "dismissed with prejudice," and "expunged" from his juvenile record. He never went to trial, and he is "not required to register as a sexual offender." (TR at page 15 line 14 to page 22 line 16, at page 28 line 13 to page 32 line 20, at page 36 line 5 to page 44 line 23, at page 46 line 3 to page 54 line 23, and AppXs A, N, O, P, R, S and T.)

Applicant was truthful and contrite throughout his hearing. (TR at page 12 line 18 to page 34 line 9.)

Applicant's father, a former "FBI Chaplain," and currently a "Law Enforcement Chaplain" and "Fire Chaplain" for his state, testified on his son's behalf and offered a signed statement regarding his son and adopted daughter (TR at page 46 line 3 to page 54 line 23):

"In . . . [Applicant's] teenage years he made mistakes and worked through the consequences of his decisions. [Applicant] . . . made amends to the best of his ability and took responsibility for his actions. As . . . [Applicant] worked through the court processes, each person he engaged with noted his restoration behavior and concluded with early completion of the court deferment stipulations; resulting in the case being dismissed and expunged. This case was . . . [Applicant's] only contact with law enforcement and since his teenage years, has had no further legal proceedings. Though this circumstance was difficult for . . . [Applicant] and our family, we have moved forward in healthy relationships with one another.

As our family processed through difficult times, . . . [Applicant's adopted sister] gained great strength and confidence. She excelled in high school and graduated at seventeen years old. She is currently serving in the United States Army and training to become a Combat Medic. Though the early years of her life were challenging, she has become a successful young woman. (AppX G.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded 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, an “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 access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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 relating to the guideline 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.

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

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (b) a pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop; and
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.

Applicant had improper sexual relations with his younger adopted sister on four occasions. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 14 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 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's behavior occurred during his adolescence, the last time being nearly eight years ago in January of 2018. He has a very favorable psychological evaluation, and completed all court ordered requirements, six months early. Sexual Behavior is found for Applicant.

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified 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 guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable 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.

Applicant had sexual relations with his underage, adopted sister. The evidence is sufficient to raise this disqualifying condition.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

(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;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant's improper conduct occurred nearly eight years ago when he was a juvenile. His entire family knows of his past misconduct. Applicant has produced evidence of counseling and of the positive steps, to include reconciliation with his sister, that alleviate any risks that could result from his past conduct. Personal Conduct is found for Applicant.

Guideline J - Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

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.

The guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. Two conditions apply, as discussed below:

(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; and

(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.

Applicant was charged, when he was a juvenile, in court with improper sexual conduct. This evidence raises security concerns under these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 32 contains two conditions that could mitigate criminal conduct security concerns:

- (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.

Sufficient time has passed, nearly eight years, since Applicant's juvenile criminal conduct. He provided evidence of rehabilitation and reconciliation with his family, to include his victim-sister. The evidence of his improper conduct has been expunged from his state's public records. Based on those facts, the evidence does not cast doubt on Applicant's reliability, trustworthiness, and good judgment. The evidence establishes mitigation under both of the above conditions. Criminal Conduct is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines D, E, and J in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Of significant importance is the Applicant's "age and maturity at the time of the admitted conduct. He was a young teenager. The Applicant is now highly respected at work and in his community, as evidenced by his parents' testimony, by an award, performance evaluations, and by six letters of recommendation. (AppXs D~F, and I~M.) Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the sexual behavior, personal conduct, and criminal conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline D: **FOR APPLICANT**

Subparagraphs 1.a~1.d: **For Applicant**

Paragraph 2, Guideline E: **FOR APPLICANT**

Subparagraph 2.a: **For Applicant**

Paragraph 2, Guideline J: **FOR APPLICANT**

Subparagraph 3.a: **For Applicant**

Conclusion

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

Richard A. Cefola
Administrative Judge