



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 24-02453

Applicant for Security Clearance )

### Appearances

For Government: Sakeena Farhath, Esq., Department Counsel

For Applicant: *Pro se*

01/07/2026

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### Decision

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HARVEY, Mark, Administrative Judge:

Guideline D (sexual behavior) security concerns are not mitigated. Eligibility for access to classified information is denied.

### Statement of the Case

On June 30, 2022, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On May 27, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; 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 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 Guideline D. (HE 2) On June 30, 2025, Applicant responded to the SOR, and he requested a hearing. (HE 3)

On May 27, 2025, Department Counsel was ready to proceed. On September 10, 2025, the case was assigned to me. On September 19, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a Notice setting the hearing for October 15, 2025. (HE 1) All administrative judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding. On November 19, 2025, DOHA issued a Notice rescheduling the hearing for December 5, 2025. Applicant's hearing was held as rescheduled, in the vicinity of Arlington, Virginia, using the Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered three exhibits; Applicant did not offer any exhibits; and all proffered exhibits were admitted into evidence without objection. (Tr. 17, 21-22; GE 1-GE 3) On December 12, 2025, DOHA received a copy of the transcript. Applicant did not request that the record be held open after the hearing.

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

## **Findings of Fact**

In Applicant's SOR response, he denied the SOR allegation in ¶ 1.a. (HE 3) He also provided some information about the allegations. His admissions are accepted as findings of fact.

Applicant is a 55-year-old systems administrator who has worked for the same DOD contractor since December 2022. (Tr. 6, 9, 23) He worked for several other DOD contractors for 13 years. (Tr. 10) In 1988, he graduated from high school. (Tr. 7) He attended college for about two years, and he does not have a college degree. (Tr. 7) He served in the Navy from 1988 to 1994 and from 2000 to 2007. (Tr. 8) He received honorable discharges in 1994 and 2007, and he left the Navy as a petty officer second class (E-5). (Tr. 8) His Navy specialties were data systems technician and electronics technician. (Tr. 8) He has never married, and he does not have any children. (Tr. 10)

## **Sexual Behavior**

SOR ¶ 1.a alleges under the sexual behavior guideline that in October 2022, Applicant was terminated from his employment for sexual harassment. He allegedly made inappropriate sexual comments to and about his co-workers. He also used his personal laptop to view inappropriate images, videos, and/or media at his place of employment.

On October 22, 2022, Applicant's coworker, Ms. Y, made a written statement to her supervisor about Applicant's comments to her on October 19, 2022. Ms. Y reported that Applicant made the following statements when she was alone with him in a room at work:

[Applicant] said, "Women with red hair and blue eyes make me weak." [Ms. Y] said, "What?" He then repeated himself & said, "Women in red hair, blue eyes or green eyes, it doesn't matter, make me weak." As he said this, he gripped his jaw, showed his teeth & stared out almost as in a trance & he made weird noises. . . . He then went on to say, "Don't leave them alone with me in a room. Don't you dare leave them alone with me because I would tie them up in a rope & . . . ." I thought he said "& to feel the things that come out of her." Because he whispered the last part, I wanted to make sure I [heard] what he said so I asked, "What did you say?" He then said, "I said & to hear the sounds that come out of her." As he said this statement the 1st time, he took his hand out & wiggled his fingers as if he was showing me how he would touch them. When he repeated himself again[,] he did the same motion & whispered it. His eyes got big & he started turning red & he was shaking almost trembling as if he was getting excited thinking about this. (GE 3)

Applicant's November 18, 2024 Office of Personnel Management (OPM) summary of his personal subject interview (PSI) states:

Subject was asked if he recalled any conversations that would make [Ms. Y] feel uncomfortable. Subject responded, "This was two years ago. I just remember trying to help her do her job. I didn't understand the accusations, I still don't. There is no way to defend yourself from accusations." Subject was asked if he told his current employment about his termination from [his previous employment]. Subject responded, "Yes, I told them I was terminated, and my position was eliminated." Subject believes he mentioned it to the hiring manager (name unrecalled) to include his current supervisor, [name omitted]. Subject showed agent a copy of his current SF86 he recently filled out for his clearance which he answered Fired, the reason listed for being fired was Position Eliminated.

Subject was asked if he ever mentioned he was terminated for Sexual Harassment. Subject responded, "Not specifically no." Subject was asked if there was any reason why he never mentioned he was terminated for sexual harassment. Subject responded, "Well I didn't want to explain it. I didn't want to lie. My position was eliminated, I did not lie. I do not feel I harassed anyone sexually." Subject was asked if it's possible he was fearful of not being hired at the new company due to having these allegations brought up against him. Subject responded, "I'm not sure, I told them my position was eliminated, that was my thinking at the time."

Subject was asked if he ever said anything inappropriate to [Ms. Y] at work. Subject responded, "According to her, I did. To my knowledge, No." Subject was asked if he was attracted to her. Subject responded, "No, she was fine to look at, but way too young for me. She was a co-worker; you don't do that." Subject was bothered by the accusations. Subject was asked what he meant by fine to look at. Subject responded, "She was a young woman,

good character and traits, good at her job. She was not ugly, no deformities a young woman."

Subject was asked if he ever made a comment about the color of her hair or the color of her eyes. Subject responded, "No". Subject was asked if he ever followed her into the Comms Room. Subject responded, "Only if I had to be in the room." Subject was asked if he ever made the comment to [Ms. Y]. "Women with red hair and blue eyes make me weak." Subject responded, "No, I never mentioned any of that to Subject." Subject was asked if he ever said to [Ms. Y], "Don't you dare leave them alone with me in a room. I would tie them up in a rope to feel the things that come out of her." Subject responded, "No."

Subject was asked if he had a version different from this which took place. Subject admitted to making a comment about liking naughty librarians which was his preference. Subject did not think of [Ms. Y] as a naughty librarian. Subject was asked to provide details about what he said regarding the naughty librarian. Subject could not recall any details of the story he told [Ms. Y]. (GE 2 at 4-5)

In Applicant's response to DOHA interrogatories, he made two minor corrections to the OPM PSI summary. (GE 2) He did not make any corrections to OPM's quoted summary, *supra*. (GE 2)

Management told Applicant he was terminated for sexual harassment; however, he was not told the details. (Tr. 25) He said he did not remember what he said that was offensive. (Tr. 24) His company had rules against seeking a "quid pro quo" or creation of "a hostile work environment," and he claimed that he complied with these rules. (Tr. 24, 36) He denied commenting to a female coworker about the attributes of women which he found to be attractive. (Tr. 32) Although he conceded that he said he liked women with red hair, he did not remember saying specifically that women with red hair and blue eyes make him weak or mention tying up women with a rope. (Tr. 32) A coworker said he commented that he liked naughty librarians, and he responded "I don't remember that, but I would have said something like that. Yeah. I do like naughty librarians as a concept." (Tr. 35)

The primary complainant was Ms. Y, and Applicant said, "So I don't know that she made anything up. I'm not accusing her of anything." (Tr. 38) Applicant's supervisor approved the use of his personal computer at work, and he had a rotating screen saver, with "women in bikinis or dresses" and women in sports. (Tr. 40-41) Applicant did not see anything wrong with the screen saver "because it was not nudity." (Tr. 40) When his supervisor told him to change the screen saver, he changed it to a standard Windows default. (Tr. 40-41) He denied that he was "trying to create a hostile work environment so that [female coworkers] would be uncomfortable." (Tr. 50)

Applicant's responses at his hearing to Ms. Y's allegations that he made specific inappropriate comments are as follows:

(1) Ms. Y said that Applicant said, he “want[ed] to tie an actress up and listen to the sounds her body makes.” (Tr. 47) Applicant denied he made this statement. (Tr. 47)

(2) Ms. Y said that Applicant said, “Women in red hair, blue eyes or green eyes, it doesn’t matter. They make me weak. . . . He gripped his jaw, showed his teeth, and stared out almost as if in a trance, and he made weird noises.” (Tr. 48) Applicant said he did not remember making this statement or acting in this manner. (Tr. 48)

(3) Ms. Y said Applicant said, “Don’t leave them alone with me in the room. Don’t you dare leave them alone with me, because I would tie them up in a rope and . . . feel the things that come out of her.” (Tr. 48-49) He clarified to Ms. Y that he wanted to hear the words that come out of her rather than “things.” (Tr. 49) Applicant denied that he made these statements. (Tr. 49)

## 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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 Director of National Intelligence 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 [or her] 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

### Sexual Behavior

AG ¶ 12 contains the security concern for sexual behavior:

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 includes conditions that could raise a security concern and may be disqualifying:

- (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;

(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(c) and 13(d) apply. There was no evidence presented that Applicant's conduct was criminal or that he was unable to stop. AG ¶¶ 13(a) and 13(b) do not apply. Additional discussion is in the mitigating section, *infra*.

AG ¶ 14 lists conditions that could mitigate security concerns:

(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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board 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).

Ms. Y said that Applicant said to her:

"Women with red hair and blue eyes make me weak." [Ms. Y] said, "What?" He then repeated himself & said, "Women in red hair, blue eyes or green eyes, it doesn't matter, make me weak." As he said this, he gripped his jaw, showed his teeth & stared out almost as in a trance & he made weird noises.... He then went on to say, "Don't leave them alone with me in a room. Don't you dare leave them alone with me because I would tie them up in a rope & . . ." I thought he said, "& to feel the things that come out of her." (GE 3)

Applicant claimed in his OPM PSI, in his SOR response, and at his hearing that he did not make or did not remember making sexually inappropriate comments to Ms. Y. I find that he lied in these three statements when he denied or claimed that he did not remember making these sexual statements to Ms. Y. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). I limited my consideration of these false statements to the five purposes listed above.

Applicant had inappropriate screen savers on his personal computer while he was using it in the workplace. His supervisor told him to take off the screen savers, and he complied. This specific allegation shows Applicant had poor judgment; however, it is of limited security significance because the pictures were not lewd or obscene; he was honest about it at his hearing; and he complied with his supervisor's directive. This specific allegation is mitigated.

Applicant did not take responsibility for his creation of a sexually hostile work environment for Ms. Y. Acceptance of responsibility, which includes a candid admission of conduct, is often considered the first step on the road to rehabilitation. More time must pass without actions of security concern, such as lying during the security clearance process and engaging in creation of a sexually hostile environment at work, before reinstatement of his security clearance will be warranted. Guideline D security concerns are not mitigated.

## 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 Guideline D are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 55-year-old systems administrator. In 1988, he graduated from high school. He attended about two years of college. Applicant served in the Navy from 1988 to 1994 and from 2000 to 2007. He received honorable discharges in 1994 and 2007, and he left the Navy as a petty officer second class. His Navy specialties were data systems technician and electronics technician.

In 2022, Applicant made sexually inappropriate comments to a coworker, Ms. Y, while they were both in the workplace. He falsely denied or claimed he could not remember his comments in his 2024 OPM PSI, in his 2025 SOR response, and at his hearing in 2025. His failures to be forthright and candid about security-relevant conduct show a lack of rehabilitation, good judgment, and trustworthiness.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. “[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information.” ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate sexual behavior security concerns.

## 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

## Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

Mark Harvey  
Administrative Judge