



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



In the matter of: )  
)  
) ISCR Case No. 24-01723  
)  
Applicant for Security Clearance )

**Appearances**

For Government:  
Tara Karoian, Esquire, Department Counsel

For Applicant:  
Sean D. Rogers, Esquire  
National Security Law Firm

02/12/2026

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**Decision**

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ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

On November 25, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines D (Sexual Behavior), E (Personal Conduct), and J (Criminal Conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR (Answer) with attachments on March 26, 2025, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 16, 2025. The case was assigned to me on June 2, 2025. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 13, 2025. I convened the hearing as scheduled on July 17, 2025. The Government offered Government Exhibits 1 through 13, which were admitted without objection. Applicant testified on his own behalf, called three additional witnesses, and offered Applicant Exhibits A through Q, which were admitted without objection. Applicant requested that the record remain open for receipt of additional evidence. He submitted Applicant Exhibits R and S in a timely manner and they were admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 28, 2025. The record closed on July 30, 2025. This decision was delayed when all administrative judges were furloughed from October 1 through November 12, 2025, during a Federal government shutdown due to a lapse in federal funding.

### **Findings of Fact**

Applicant is 37 years old and divorced with two children, a boy (Son) and a girl (Daughter). He has a bachelor's degree. He was employed by a defense contractor as an aircraft maintenance support engineer senior. In that position he held a security clearance. While not currently employed with them, he is still sponsored for a security clearance. He currently works for a home improvement store. He served on active duty with the Air Force from May 2011 to September 2022. (Government Exhibit 1 at Sections 12, 13A, 17, 18, and 25; Applicant Exhibit F; Tr. 118-119.)

#### **Guideline D: Sexual Behavior**

The Government alleged in this paragraph of the SOR that Applicant is ineligible for clearance because he has engaged in sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the Applicant to undue influence, coercion, exploitation, or duress.

#### **Guideline E: Personal Conduct**

The Government alleged in this paragraph of the SOR that Appellant is ineligible for clearance because he has engaged in actions that involve questionable judgment, lack of candor, dishonesty, and unwillingness to comply with rules and regulations. Applicant has admitted to the sole allegation under Guideline E, which incorporates ¶ 1 of the SOR in its entirety.

## **Guideline J: Criminal Conduct**

The Government alleged in this paragraph of the SOR that Applicant is ineligible for clearance because he engaged in criminal activity that creates doubt about his judgment, reliability, and trustworthiness. Applicant has admitted to the sole allegation under Guideline J, which incorporates ¶ 1 of the SOR in its entirety.

All three of the allegations involve one incident. The undisputed facts are as follows:

During the evening of July 7, 2021, Applicant placed a cell phone with a camera in a basket of towels in the bathroom in his house that was used by his adolescent Daughter. Once the cell phone was placed in a position towards the shower in the bathroom, he started recording a video and left the room. He did not tell his wife, his Daughter, or his son that he had done this. During the time the video was recording, between 10 and 15 minutes, his then 13-year-old Daughter went in the bathroom, disrobed, and took a shower. After her shower Daughter discovered the camera, found that it had been recording a video, watched the video that showed her nude, and put the phone back where she had found it. Daughter then went to Applicant's wife, her mother (Mother), told her what she had found, and said that she would call the police. (Government Exhibit 2; Tr. 73-78.)

After some discussion with her Mother, Daughter called the police and told them what had happened. The police eventually arrived. During the period between Daughter's discovery of the cell phone camera and the police arriving at the house, Applicant stated that he remembered he had left the camera running in the bathroom. He retrieved the camera and deleted the video. He then removed the camera from the bathroom and put it into another part of the house. It is unclear from the record whether this occurred before or after Daughter contacted the police. (Government Exhibit 2.)

Applicant, Mother, and Daughter were all questioned by police. During questioning Applicant did not inform the police that he had deleted the video off of his phone. All of Applicant's electronic devices were seized and, after obtaining a search warrant, were searched. The deleted video of Applicant's Daughter taking a shower was recovered by use of forensic analysis. Forensic analysis did not discover any other questionable videos on Applicant's devices. (Government Exhibits 3 and 8; Tr. 85, 99-101.)

Applicant was subsequently arrested and in approximately September 2021 he was charged with Voyeurism (Victim Under 18), and Tampering With Evidence. He pled No Contest to the charges and was given a conditional discharge and placed on probation for three years. Probation was due to end in January 2025. He submitted the Order of

Release on Conditional Discharge from the court, signed by the judge on January 28, 2025. The Order released him from probation and dismissed the case. (Government Exhibits 10, 11, 12, and 13; Applicant Exhibits P, Q, and R.)

When the incident took place Applicant was on active duty with the US Air Force. As a result of the charges in his case, he was processed for an administrative discharge. He requested an administrative review board. Many people wrote letters to the board on Applicant's behalf. Those letters are contained in the record. The board found reasons to discharge Applicant and he received a General Discharge (Under Honorable Conditions) due to Misconduct (Serious Offense). He was discharged in September 2022. (Applicant Exhibits O and S; Tr. 46-51, 110-112.)

About a year or so after he was discharged Applicant and Mother divorced. Mother received custody of their Daughter, Applicant has custody of his Son. (Tr. 55-57, 111-114.)

#### Discussion:

Applicant has consistently stated that he had no prurient intent when he put the camera in the basket in the bathroom and aimed it towards the shower. Rather, he stated that he put it there as part of an analysis of the house for the purpose of putting cameras in various rooms to watch workmen who were due to start construction soon after this date. (Tr. 33-34, 43, 120.)

Applicant stated that when he eventually remembered and retrieved the camera, he saw a thumbnail of the video and immediately deleted it. According to him, the thumbnail did not show his Daughter. He further stated that he was not attempting to conceal evidence when he deleted the video and moved the camera out of the bathroom. He testified that he did not view the video, and had no idea his Daughter had taken a shower during the period the camera was running. Despite repeated questioning by Department Counsel and myself, Applicant was unable to consistently explain his conduct in deleting the video without watching it. He gave several different non-answers to the questions about his viewing the thumbnail and not viewing the video before deleting it. (Tr. 78-82, 88-90.)

For example, he first testified, "I realized, hey, the phone's still in there. I got the phone, and I saw a thumbnail. And, I was like, oh my gosh, what is this? It's been recording this whole time. Deleted it right away." (Tr. 37-38.)

He later testified:

So, during the whole process, you know, it was getting late. I was aware that both my son and daughter had, you know, was getting ready to shower or showered. And, in that thumbnail, that's when I realized – hey, there's a chance where it could have captured something now. And I deleted it right away. (Tr. 91.)

Applicant also testified that he had no knowledge of whether his Daughter or son had taken a shower. However, he also changed his story to say that he deleted the video because of what he thought might have been captured on the video. (Tr. 83-84, 89, 92, 94, 122.)

Applicant testified that he did not notify anyone else in the house about the existence of the camera. Nor did he tell anyone in the house about the existence of the video that he had deleted. He did not ask anyone in the house if they had been in the bathroom during the time he was recording the video. (Tr. 78, 92.)

Applicant's ex-wife (Mother) testified. Her testimony was somewhat vague about the night in question. Mother stated that she was surprised by Daughter's statement about finding the video and didn't know what to do. She allowed Daughter to call the police. She also discussed the investigation. Though it is unclear, it appears that there came a time when Mother and Daughter stopped cooperating with the authorities. There are no current limitations on Applicant's contact with Mother and Daughter. According to Mother, the relationship between all members of the family is cordial. (Applicant's Answer at 9; Tr. 149-180.)

Applicant testified that he agreed to accept a conditional sentence with a plea of No Contest in order to avoid the stress on his family. He was particularly concerned about the impact on his Daughter. (Tr. 45-46, 105-109.)

Applicant stated that he has a good relationship with his Daughter. He stated that he never asked her for the reasons behind her decision to telephone the police. He did state that he and Mother had trained Daughter to protect herself in case something felt wrong. (Applicant's Answer at 9; Tr. 102, 116-117, 123-125, 155-156.)

## **Mitigation**

Applicant's Mother testified on his behalf. She believes the incident was an unfortunate mistake. She stated that her granddaughter (Daughter) has never expressed to her any concerns about her father. (Tr. 136-148.)

Applicant's father, sister, and brother wrote letters on his behalf. (Applicant Exhibit M.)

A retired Air Force senior non-commissioned officer testified for Applicant. He served with Applicant in an overseas assignment. He found Applicant to be a good person and recommends him for a position of trust, whether or not the allegations in the SOR are true. (Tr. 127-136.)

Applicant had a successful career in the Air Force. He received awards and commendations during his Air Force service. (Applicant Exhibits G, I, and K; Tr. 24.)

Applicant received awards and commendations during his employment with a defense contractor and at a home-improvement store. His supervisor at the defense contractor for two years wrote a letter on his behalf. (Applicant Exhibits H and L.)

### **Policies**

When evaluating an applicant's national security eligibility for a security clearance, 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**

### **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.

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

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (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.

Applicant used a cell phone camera to secretly record a nude video of his pre-pubescent Daughter in July 2021. The Daughter discovered the camera and called police. He plead No Contest to charges of Voyeurism and Destruction of evidence. His probationary period ended in January 2025. All of the disqualifying conditions apply to the facts of this case.

The following mitigating conditions are possibly applicable under AG ¶ 14:

- (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; and
- (c) the behavior no longer serves as a basis for coercion, exploitation, or duress.

Applicant has consistently stated that he had no prurient interest in placing the camera in a hidden area of the bathroom, running it during a period his Daughter was in the shower, subsequently deleting the video allegedly without viewing it, and failing to notify anyone in the household of the existence of the camera or of the video. His testimony, as well as that of his ex-wife (Mother), was both self-serving and non-responsive. Repeatedly pressed to explain the reasons behind his conduct, his answers were often contradictory. He would say that he deleted the video because he thought there might be something inappropriate on there, while also stating at other times that he had no knowledge that something inappropriate might be on there.

I have considered the argument that no other evidence was discovered showing such videos on his other electronic devices. However, that does not mean that he did not

take this video with the intent to see his Daughter naked and taking a shower. What has never been satisfactorily explained is why the Daughter immediately found the video to be of such a concern to her safety that she felt it necessary to call the police with or without her Mother's permission. His conduct, and his failure to confront his misconduct, shows an appalling lack of judgment. His refusal to take responsibility for this act makes him vulnerable to coercion and serves as a bar against successful mitigation. Applicant has not mitigated the security significance of his sexual misconduct. The Sexual Behavior Guideline is found against Applicant.

### **Guideline E: Personal Conduct**

The security concern under this guideline 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. Three are applicable 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; 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, could affect the person's personal, professional, or community standing.

The Government alleges in this paragraph that the facts found under Paragraph 1, above, are cognizable under this guideline as well. Based on the above findings, I find that both the quoted disqualifying conditions apply.

I considered the following mitigating conditions under ¶ 17 and none of them apply to the facts of this case:

(c) the offense was 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; and

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

Applicant has failed to show how any of the mitigating conditions apply to his conduct for all the reasons stated under Paragraph 1. This guideline is found against Applicant.

### **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 two 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; 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.

The Government alleges in this paragraph that the facts found under Paragraph 1, above, are cognizable under this guideline as well. Based on the above findings, I find that both the quoted disqualifying conditions apply.

The guideline includes four conditions in AG ¶ 32 that could mitigate the security concerns arising from Applicant's alleged criminal conduct. Three have possible application to the facts of this case:

(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;

(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

Applicant plead No Contest to the allegations stated under subparagraph 1(b). As stated above, he refuses to take responsibility for that misconduct. Without accepting responsibility his criminal conduct cannot be mitigated at the present time and evidence of rehabilitation is lacking. The Criminal Conduct guideline is found against Applicant.

### **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. Viewing the evidence as a whole, Applicant has not mitigated the security concerns of his sexual misconduct, related personal conduct, and criminal conduct.

### **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
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge