



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



In the matter of:

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ISCR Case No. 25-00925

Applicant for Security Clearance

Appearances

For Government:
Cynthia Ruckno, Esq, Department Counsel

For Applicant:
Pro se

04/29/2026

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant has mitigated the security concerns raised under the Personal Conduct guideline. Applicant has not mitigated the security concerns raised under the Sexual Behavior and Criminal Conduct guidelines. National security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing on June 21, 2024 (Questionnaire). On November 6, 2025, the Defense Counterintelligence and Security Agency (DCSA) 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 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 November 22, 2025, Applicant responded to the SOR in writing (Answer) and requested that the case be decided on the written record in lieu of a hearing. In his Answer, Applicant admitted the allegations, but qualified his response to SOR ¶1.a, noting that he was “not aware of any indefinite probation.” On January 30, 2026, Department Counsel submitted the Government’s written case in a File of Relevant Material (FORM). Therein, Department Counsel amended SOR ¶1.a by striking the reference to “indefinite probation” and replacing it with “a maximum of two years’ probation.” This amendment is approved in accordance with Directive ¶ E3.1.10.

A complete copy of the FORM, consisting of Government Exhibits (GE) 1 to 7, the SOR amendment, and the Government’s arguments in support of the SOR, was received by the Applicant on February 17, 2026. He was afforded an opportunity to respond to the amendment, file objections, and submit material to refute, extenuate, or mitigate the security concerns, but he did not respond within the period specified to do so. The case was assigned to me on March 20, 2026, and GE 1 to 7 were admitted without objection. In addition, given that Applicant opted not to submit a response to the FORM, his silence is construed as a denial to SOR ¶1.a, as amended.

Findings of Fact

Applicant is 30 years old and is presently employed as an apprentice for a DoD contractor where he has worked since December 2022. He submitted the Questionnaire approximately 18 months after starting his employment with the DoD contractor and adjudication remains pending. He received an associate’s degree in 2017, is unmarried, and has no children. He has also received vocational training from the DoD contractor. (GE 3 at 5, 8-9, 18-19)

SOR Paragraph 1, Guideline D (Sexual Behavior)

The Government alleged that Applicant is ineligible for a security 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 or coercion, exploitation, or duress. I find the following facts regarding this allegation:

1.a. Creating Unlawful Image of a Minor: In February 2017, while working as a church staff member in a Sunday school class, Applicant surreptitiously took multiple photographs of a 17-year-old female assistant with his phone. Two of the photographs were taken up the victim’s skirt after Applicant pretended to drop some paper on the floor. At this point the victim realized what Applicant was doing and reported the incident to senior staff at the church, who then contacted Applicant’s mother. Applicant’s mother indicated Applicant had acknowledged taking the photographs but had deleted them from his phone. Applicant was aware the victim was a minor.

Several days later the local police department was contacted, and an investigation was initiated. After the victim was interviewed the Applicant was confronted. He confessed to taking the photos, admitted he had transferred the images to his laptop computer, and explained that he was in love with the victim, but knew what he was doing was wrong. He later explained during his DoD interview in 2024 that he made the image transfer “because he wanted to delete the pictures all at once versus doing so individually on his phone.” He also only recalled taking “about 10” photos during a single day, which he wanted to keep “with the intention of sexually satisfying himself,” but denied having actually looked at the photos he took.

During the police investigation however, a forensic analysis of the two devices yielded 69 images of the victim, including the two photographs taken up her skirt. Applicant, who was 21-years-old at the time of the incident, was subsequently charged with two felony counts of Unlawful Creation of Videographic/Still Image of a Minor. In accordance with a plea agreement, and after successful completion of court-mandated counseling, Applicant was ultimately convicted of two misdemeanor counts of Disorderly Conduct. He was sentenced to confinement for 24 months, which was ultimately suspended due to good behavior. He also received supervised probation, not to exceed two years, unless sooner released by the Court or Probation Officer, and a no-contact order with the victim. Applicant’s mother and sister are aware of the incident. (Answer; GE 4 at 3-6; GE 5 at 4, 15-16; GE 6 at 1-2)

SOR Paragraph 2, Guideline E (Personal Conduct)

The Government alleged that Applicant is ineligible for a security clearance because he had engaged in conduct that involved questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. I find the following facts regarding this allegation:

2.a. False Statement to a DoD Investigator: In September 2024, an authorized agent for the DoD conducted a subject interview with the Applicant that included a discussion of the incident alleged in SOR ¶ 1.a. Applicant acknowledged taking photos of the victim because he had “a crush” on her and wanted photos of her lower body. When asked how many pictures he took, he responded “about 10.” He was also asked if he had taken pictures of the victim previously and he said he had not. In his Answer, he admitted the allegation but denied having intentionally provided an inaccurate number, noting the incident had occurred some seven years prior. (Answer; GE 4 at 4-5)

SOR Paragraph 3, Guideline J (Criminal Conduct)

The Government alleged that Applicant is ineligible for a security clearance because he has engaged in criminal conduct that calls into question his ability or willingness to comply with laws, rules, and regulations. I find the following facts regarding this allegation:

3.a. Cross-allegations with paragraph 1 in its entirety. See discussion *supra*.

Whole Person Evidence

Applicant attended counseling after the incident at the behest of his church. The nature of the counselling was specific to the incident and was not focused on compulsive, self-destructive, or high-risk sexual behavior. He also successfully completed 18 months of court-ordered group sex offender classes. Applicant was unemployed for the year following the incident but has been steadily employed since then. (GE 3 at 10-14; GE 4 at 3-4)

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 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 *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

SOR Paragraph 1, Guideline D (Sexual Behavior)

The security concern 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 facts of this case establish the following potentially disqualifying conditions set forth in AG ¶ 13 to the allegation under Guideline D:

- (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 or discretion or judgement.

The burden therefore shifts to Applicant to mitigate security concerns under Guideline D. The guideline includes the following conditions in AG ¶ 14 that could potentially mitigate 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;

(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.

None of the mitigating conditions, individually or collectively, are sufficiently applicable to overcome Appellant's sexual behavior. While the incident did occur in 2017, there is no mitigating evidence in the record to address Applicant's outlook today. As such, it cannot be concluded that the behavior is unlikely to recur and does not cast doubt on Applicant's current reliability, trustworthiness, or judgment. Additionally, while there is some evidence of Applicant's having attended court-mandated classes, there is no evidence in the record of subsequent compliance with a treatment plan, a favorable prognosis, or any statement from a counselor or therapist as to Applicant's current status. Finally, the record evidence does not suggest anyone at Applicant's workplace is aware of his conviction, which serves as a present basis for coercion, exploitation, or duress.

SOR 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.

The facts of this case could potentially establish the following disqualifying condition set forth in AG ¶ 16:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

In his Answer, Applicant admits the inaccuracy of his response to the investigator's question in 2024 about how many photographs he took of the victim in 2017. He went on, however, to disavow any intent to deceive and attributed the misinformation to the incident having occurred seven years prior to the interview. He also indicated that in fact he had no idea how many photos he took but was told by the interviewer to "try and give a number anyway." This explanation belies the requisite lack of candor, dishonesty, or unwillingness to comply described in AG ¶ 16. Rather, the evidence suggests Applicant was providing an "educated guess" seven years after the fact. As such, the disqualifying condition of AG ¶ 16 is not established.

SOR Paragraph 3, Guideline J (Criminal Conduct)

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant'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 facts of this case establish the following potentially disqualifying conditions set forth in AG ¶ 31 to the allegation under Guideline J:

(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 burden therefore shifts to Applicant to mitigate security concerns under Guideline J. The guideline includes the following conditions in AG ¶ 32 that could potentially mitigate 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.

The record evidence shows that applicant has been employed since 2018 and has received job training from his current employer. Applicant, however, has provided no evidence addressing the mitigating conditions in AG ¶ 32. Without any character witness statements, employer reviews, counselling records, psychological evaluations, parole officer reports, or even a personal statement, a favorable conclusion of successful rehabilitation – and that Applicant’s misconduct is unlikely to recur – is not possible. Applicant therefore has not met his burden as the evidence does not support a finding that his criminal conduct does not cast doubt on his reliability, trustworthiness, or good judgment.

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 have given the appropriate weight to Applicant’s Questionnaire submissions and Answer, but ultimately his sexual and criminal conduct issues cannot be resolved in his favor and 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
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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 Applicant national security eligibility. Eligibility for access to classified information is denied.

RICHARD A. CEFOLA
Administrative Judge