



DEPARTMENT OF WAR  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 25-00091

Applicant for Security Clearance

**Appearances**

For Government: Lauren Shure, Esq., Department Counsel  
For Applicant: *Pro se*

05/07/2026

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**Decision**

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HOGAN, Erin C., Administrative Judge:

On March 7, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline D, Sexual Behavior; Guideline E, Personal Conduct; and Guideline J, Criminal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented on June 8, 2017.

Applicant answered the SOR on March 19, 2025, and requested a hearing before an administrative judge. The case was assigned to me on December 18, 2025. On January 15, 2026, a Notice of Hearing was issued, scheduling the hearing on February 3, 2026. The hearing was held as scheduled. During the hearing, the Government offered three exhibits, which were admitted without objection as Government (GE) Exhibits 1 - 3. The Government also requested administrative notice be taken of two laws, the PROTECT Act of 2003 (marked and admitted as Administrative Notice (AN) 1) and Title 18 United States Code (USC), Section 2256 (AN 2). Applicant had no objection. The

transcript was received on February 17, 2026. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Procedural Issue**

On April 13, 2026, I notified the parties of my intent to take administrative notice of Title 18 USC §1466A. Obscene visual representations of the sexual abuse of children. (AN 3) A copy of the statute was attached to the e-mail.

The parties were given until Monday, April 20<sup>th</sup>, to indicate whether they object to AN 3. The Government responded and did not object. Applicant did not respond.

### **Findings of Fact**

In his answer to the SOR, Applicant denied all of the allegations in the SOR.

Applicant is a 32-year-old employee of a government contractor who seeks to maintain a security clearance. He held a top-secret clearance from 2020 until June 2024, when his top-secret clearance was suspended pending a re-investigation as a result of his access to sensitive compartmented information (SCI) being revoked by another government agency (AGA) in May 2024. He has worked for his current employer since April 2021. His highest level of education is a master's degree. He is married and has two children. (Tr. 19-21; GE 1)

Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant's privacy. The cited sources contain more specific information.

### **SOR Allegations**

Under Guideline D, Sexual Behavior, it is alleged that Applicant viewed animated images and videos depicting child pornography from 2007 through at least March 2024 (SOR ¶ 1.a: GE 2; GE 3); and that he shared animated images depicting child pornography from 2007 through at least October 2023 (SOR ¶ 1.b: GE 2; GE 3). The allegations under Guideline D were cross alleged under Guideline E, Personal Conduct (SOR ¶ 2.a) and Guideline J, Criminal Conduct. (SOR ¶ 3.a)

### **Clearance Decision Statement (Polygrapher's Unsworn Summary)**

In February 2022, Applicant was sponsored for SCI access with AGA. He was previously granted a top-secret clearance on March 2, 2020. In conjunction with a required polygraph test, he was interviewed on March 13, 2024. During the post-test interview, he told the polygrapher that since approximately 2007, he viewed images and videos of animated characters which appeared to be children between the ages of 12 and 17. The images and videos were drawn animations of characters from shows, games or original characters. The images were cartoons or comics. Applicant viewed these images

at least once or twice per month. He has viewed images where the animated characters are depicted engaging in sexual acts. (GE 2 at 8; GE 3 at 8-9)

The polygrapher wrote in his summary that Applicant told him that the week before the polygraph test, he viewed an image on “Rule 34” of a character who appeared to be a 12-year-old girl in a provocative pose beckoning the viewer and a series of images of her clothes coming off. Another time, he viewed a video of a cartoon image of a character who appeared to be a 13 or 14-year-old girl who was performing oral sex on a man. (GE 2 at 8; GE 3 at 8-9)

The polygrapher’s summary also indicated that Applicant shared images and videos of cartoon characters who appeared to be between the ages of 12 and 17 about two or three times a year. He would share images with his friends or with his sister-in-law. The summary reflects that Applicant described the images as being children either partially clothed, showing their breasts and vagina in an implied sexual nature, or fully naked. He said that the last time he shared an image with his friends was in October 2023. He denied downloading any images or videos. He denied being sexually aroused at the sight of the animated images which appeared to be children between 12 and 17 years old. He indicated he planned to continue to visit “PIXIV” or “Rule 34” even though he was aware that these websites had visual depictions of underage children. He told the polygrapher that the images and videos would come up in response to something posted on social media, jokes, and while looking for other images of characters from his shows and games. (GE 2 at 9)

On May 9, 2024, the AGA denied Applicant’s access to SCI as a result of the information he provided to the polygrapher. Applicant indicated that he wanted to appeal the decision but chose not to because he and his wife just had their first child and he did not have the time or the money to hire an attorney to do so. (GE 1 at 43; GE 2; GE 3 at 6)

### **Applicant’s Answers on SCA dated July 17, 2024**

On July 17, 2024, Applicant completed another SCA as part of the re-investigation of his security clearance after the denial of SCI access by AGA. “Section 25 – Investigations and Clearance Record” on the July 2024 SCA, asked “Have you EVER had a security clearance eligibility/access authorization denied, suspended, or revoked?” He answered “yes” and indicated that AGA denied him SCI access in June 2024. He explained the circumstances of the denial as:

Misunderstanding of facts related to online activities during polygraph interview led to clearance denial, appeal too costly to file at this time. (GE 1 at 43)

### **Applicant’s Background Investigation Interview**

On December 9, 2024, Applicant was interviewed as part of his background re-investigation related to the submission of his July 2024 SCA. He confirmed that he was denied access to SCI by AGA in May 2024. He indicated it was the result of a misunderstanding regarding his online activities. He told the investigator that he has an appreciation for Japanese manga and anime. Manga is the term for comic books and graphic novels produced and published in Japan. He indicated that he finds Japanese artistry interesting. His wife is also a fan of Japanese art, and they enjoyed watching anime on streaming services such as YouTube or Netflix. He indicated from approximately 2007 to about 2018 or 2019, he viewed images and videos about once a month on anime community groups on Twitter, Reddit or image boards, and that the images may also come from PIXIV and Rule 34. (GE 3 at 5)

PIXIV is a Japanese online community for artists. It is not a site that primarily posts pornographic art, but it allows pornographic art to be posted on the site, albeit with genitals blurred to conform with Japanese obscenity laws. Rule 34 is a website that is similar to PIXIV. It posts fan art that usually depicts cartoon characters engaging in sexual activity. The website also includes short videos from other pornography sites, which can direct you to the pornography site by clicking on the link. Both websites are on the Clearnet and are publicly accessed websites. He has never used or accessed the dark web. (*Id.*)

Applicant told the background investigator that he was asked during the post-polygraph interview about whether he has ever viewed any online activity that he has deemed inappropriate. He said, "yes" and explained to the polygrapher that images on Rule 34 and PIXIV sometimes are of young women who appear to be underage, between ages 12 and 14. He further explained that the images were drawn in suggestive positions and were either half-clothed or naked. He indicated that he does not condone these images and does not share images of this kind. (*Id.*)

Applicant also indicated during his background investigation interview that about two to three times a year, Applicant shared images of anime characters from shows or video games he likes with his friends. He indicated that some of the characters may pose suggestively, but they are always fully or partially clothed with the genital area being covered. He indicated he always viewed or downloaded these images using his personal cell phone or his personal laptop, and he never used his work computer. He indicated he never shared inappropriate images of underage children or cartoon characters engaging in sexual activity. He described two inappropriate images that he inadvertently saw. The first cartoon was an image that appeared to be a 12-year-old girl in a provocative pose and showed parts of her clothes coming off. The other cartoon image was a video-short of what appeared to be a 13–14-year-old girl performing oral sex on a man. He denied intentionally seeking out these images and denied engaging in the traffic of child pornography. He indicated that he does not seek out pornography. (*Id.*)

Applicant told the investigator that he was going to continue to visit websites like PIXIV and Rule 34 despite cartoon images of underage children because he ignores the images that are inappropriate. When he received his denial letter, he was upset because the polygraph interviewer misunderstood his answers to their question about having seen

any online activity that he thought was inappropriate. He wanted to appeal the adverse decision, but he and his wife just had their first child, and he did not have the money to hire an attorney to represent him. (GE 3 at 3)

Applicant indicated that he has never violated any local law regarding sexual behavior while in a foreign country and he has never attended or been recommended for treatment. He denies suffering from a sexual addiction or any other disorder. He said that the issues in this case were the result of the polygrapher misunderstanding his interests in manga and anime and how he came to view inappropriate images or videos of cartoons. He is hopeful that his Top-Secret clearance can be reinstated once he has the opportunity to clear up the misunderstanding. (GE 3 at 3)

### **Hearing Testimony**

During the hearing, Applicant testified that he wanted to clear up any misinterpretations of his answers during his post-polygraph interview. He said that the polygrapher was aggressively questioning him during the interview and the interview lasted several hours. The polygrapher asked him if he ever saw anything on the internet that was objectionable. Applicant told him that he saw inappropriate images on certain websites that had been previously linked to the website. He was not seeking out these images. It was not something that he viewed intentionally. Intrusive advertisements (or “pop-ups”) are fairly common among different websites. The intrusive advertisements posted different images of animated characters in suggestive or other explicit ways. He testified that he wants to be very clear he never sent any explicit images. (Tr. 15-16)

Applicant testified that the polygrapher misinterpreted what he said during the interview. He also testified that he told the special agent conducting his background investigation interview about everything that was inaccurate in the polygrapher’s summary of the post-polygraph interview. He believes his actual conduct would not be considered criminal. He stated that his personal subject interview explains the situation. (Tr. 17-18)

Under cross-examination, Applicant denied saying that he viewed videos of animated characters between the ages of 12 to 17. He admitted that he had inadvertently viewed the videos but denied intentionally searching for these videos. He stated the videos were an advertisement on the side of something he was looking for. (Tr. 24-26) He explained that “Rule 34” meant that if something exists there is an explicit version of it. “PIXIV” is a Japanese image sharing site which allows artists to share images of videos of different subjects with their friends or communities. “Dragon Maid” consists of manga and anime produced in Japan. He described them as Japanese cartoons. “Hentai” refers to explicit versions of manga or anime characters. He used the example of the animated image of the 12-year-old girl who appeared to be taking her clothes off as Hentai. (Tr. 27-30)

Department Counsel asked Applicant about his statement to the polygrapher that he shared images and videos of characters that visually depicted children between the

ages of 12 and 17 and what was the difference with the statements he provided during the enhanced subject interview. Applicant responded:

Certainly. Any images that I had shared of any characters that looked that age, or in general, never had any explicit features or anything that I would deem inappropriate, or that I would say the Government would deem inappropriate, involved in them. It was a misinterpretation by the interviewer.

And to be clear, it was - - there may have been suggestive themes in some of these images, and that's what I was referring to the polygraph examiner, but not that they were explicit like some of the other images that I had viewed inadvertently. (Tr. 31)

In response to a follow-up question from the Government, Applicant admitted that some of the images he viewed "the characters may pose suggestively, but they are always fully or partially clothed, with genitals always covered." He explained that partially clothed meant that the cartoon images wore a "midriff or shoulders or some - - you know, swimsuits, you could say." (Tr. 31-32)

Applicant testified that the explicit images appeared randomly on his computer screen and were not subject to his request or control. He was not interested in looking at the sexually explicit images. They just appeared on his screen. (Tr. 33-34) Applicant testified that he still visits some of these websites semi-regularly. He has not had much time to search these websites because he and his wife now have two young children. (Tr. 34)

Applicant explained that when he is looking for art of a character, when he goes to the link to view the actual image, the inappropriate images will still appear as related images or advertisements. In other words, he was not searching for inappropriate explicit images. When these inappropriate images inadvertently come up, he looks at the image that he was searching for. He is not interested in the inappropriate images that pop up. He does not seek them out but admits he has inadvertently viewed them. He does not share the inappropriate pop-up images with other people. He is willing to stop going to any websites that have explicit materials in order to keep his security clearance. He clarified that he cannot control the explicit advertisements that occasionally appear on websites. They are fairly common throughout the internet. (Tr. 34-47)

Applicant was asked about whether he had to click on a link to view these explicit images when they inadvertently appeared on a website he was viewing. He replied: "No, unfortunately." When asked about how long these explicit images lasted, he indicated that the images lasted a few seconds. (Tr. 37-38)

### **Summary of U.S. Child Pornography Laws**

18 USCS § 2252A primarily targets pornography involving real children or images that are indistinguishable from real children. 18 USCS § 2256 outlines the definitions for

18 USCS §§ 2251-2260A. The term “minor” refers to any person under the age of 18 years. 18 USCS § 2256 states:

(8) child pornography means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

(B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or

(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

18 USCS § 2252A, paragraph 11 states the term “indistinguishable” used with respect to a depiction, means virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is an actual minor engaged in sexually explicit conduct. This definition does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults.

In 2003, Public Law 108-21, Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act or “PROTECT Act” was passed. The intent was to prevent child abuse as well as investigating and prosecuting violent crimes against children. The Protect Act enacted 18 U.S.C § 1466A into U.S. obscenity law. It covers material that is obviously fictional – such as cartoons, drawings, paintings, sculptures and computer-generated imagery that depict minors in sexually explicit situations even when no real child is involved.

18 U.S.C § 1466A (a) states:

Any person who . . . knowingly produces, distributes, receives, or possesses with intent to distribute, a visual depiction of any kind including a drawing, cartoon, sculpture or painting, that:

(1)(A) depicts a minor engaging in sexually explicit conduct; and

(1)(B) is obscene; or

(2)(A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual

intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

(2)(B) lacks serious literary, artistic, political, or scientific value; or attempts or conspires to do so, shall be subject to penalties provided in section 2252A(b)(1).

Under federal law, whether material is considered “obscene” is based on the three-part test from *Miller v California*, 413 U.S. 15 (1973). The test includes: 1) whether the average person, applying “contemporary community standards” would find that the work, taken as a whole, appeals to the prurient interest; 2) whether the work depicts the sexual conduct in way that community considers patently offensive; and 3) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

### **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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), 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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security 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 that 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 EO 10865 provides that 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).

#### **Guideline D, Sexual Behavior**

AG ¶ 12 describes the security concern arising from sexual behavior as follows:

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 lists conditions that could raise a security concern about sexual behavior and may be disqualifying in this case:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted; and
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.

AG ¶ 13(a) applies. The Government provided sufficient evidence that Applicant observed cartoon images of minor children who appeared to be engaging in sexual activity that would be considered obscene. This is a criminal offense under Title 18 USC 1466A. The record evidence is insufficient to conclude Applicant transferred these inappropriate cartoon images to other people. SOR ¶ 1.b is found for Applicant.

The Government’s evidence solely consisted of the Clearance Decision Statement from AGA regarding Applicant’s denial of access to SCI, with the attached polygrapher’s unsworn summary of Applicant’s post-test interview. I am concerned that Applicant was not given an opportunity to review the summary of the post-test interview at the time it was prepared. However, he was given a copy of it along with the Government exhibits before the hearing, and the DOHA Appeal Board has held that a Clearance Decision

Statement is admissible as substantial evidence under the provisions of the Directive. Because a Clearance Decision Statement is not an ROI, it may be admitted without an authenticating witness. ISCR Case No. 07-18324 at 5 (App.Bd. Mar, 11, 2011) citing ISCR Case No. 08-06997 at 3 (App. Bd. Mar 1, 2011) In this case, the Government has met their burden of establishing sufficient evidence. As a result, 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.” (Directive, ¶ E3.1.15)

AG ¶ 13(c) applies. Applicant’s conduct has the potential to make him vulnerable to coercion, exploitation or duress because he occasionally viewed cartoon images that would be considered child pornography or obscene and in violation of 18 USC § 1466A.

The following mitigating conditions under AG ¶ 14 could potentially mitigate sexual behavior security concerns:

(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; and

(e) the individual has successfully completed an appropriate program of treatment, or is currently enrolled in one, and 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.

AG ¶ 14(b) does not apply. The last time Applicant observed inappropriate images of minor children involved in sex acts was approximately one week before his post-polygraph interview in March 2024. Considering Applicant’s statements during the investigation that he intended to continue to search on Rule 34 or PIXIV for art even though the sites contain inappropriate cartoon images of underage children, not enough time has lapsed to conclude similar behavior is unlikely to occur. While he testified during the hearing that he was willing to stop going to any websites that have explicit materials, it was conditioned upon him keeping his security clearance.

AG ¶ 14(c) does not apply. Even though Applicant described his anime and manga hobby as not being focused on cartoons containing child pornography, he admits to viewing indecent images of underage children that appeared on his computer as pop-ups or advertisements on certain websites. These pop-ups have the potential to subject him to coercion, exploitation or duress even though he claimed that he would ignore the inappropriate pop-ups.

AG ¶ 14(e) does not apply because Applicant has not sought counseling or treatment or received a favorable prognosis from a qualified mental health professional that he has no issues with child pornography.

Questions remain under the Sexual Behavior concern because of Applicant's statements during his post-polygraph interview in March 2024, and statements he made during his background investigation interview in December 2024. In particular, he admits to searching for anime and manga on PIXIV or Rule 34. He described PIXIV as a Japanese online community for artists that allows pornography to be posted on site, albeit with genitals censored (blurred) to conform with Japanese obscenity laws. He described the Rule 34 as similar to PIXIV. It is fan art that usually depicts cartoon characters engaging in sexual activity. He admits to seeing cartoon images on both PIXIV and Rule 34 that appear to be young girls around 13 or 14 years-old, drawn in suggestive ways or positions that are half-clothed or naked. He indicated during his background investigation interview in December 2024 that he intends to continue to visit sites like PIXIV or Rule 34 despite the sites showing visual depictions of underage children because he ignores the images that are inappropriate. I am not confident that Applicant will be able to completely ignore or avoid inappropriate cartoon images of minor children that violate 18 USC ¶ 1466A. The issues under Guideline D are not mitigated.

### **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 the national security or adjudicative processes. . . .

The following disqualifying conditions under AG ¶ 16 potentially apply to Applicant's case:

AG ¶ 16(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.

Under Guideline E, the following mitigating condition potentially applies in Applicant's case:

AG ¶ 17(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(e) does not apply because of Applicant's expressed intent to continue to search on websites such as PIXIV or Rule 34, even though the websites contain cartoon images of under-age children which would be deemed obscene, pornographic and illegal. Based on his past statements during his security clearance investigation, his testimony during the hearing that he is willing to stop searching websites that contain explicit materials in order to keep his security clearance is given less weight. He remains vulnerable to exploitation, manipulation, or duress.

The Personal Conduct concern is found against Applicant.

### **Criminal Conduct**

AG ¶ 30 describes the security concern about criminal conduct, "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 lists the following condition that could raise security concerns and may be disqualifying in this case:

(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.

AG ¶ 31(b) applies because viewing cartoon images of underage children in provocative poses or engaging in sexual conduct violates 18 USC § 1466A.

AG ¶ 32 describes one mitigating condition that potentially applies in 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.

AG ¶ 32(a) does not apply. The last time Applicant viewed an inappropriate image of an underage child committing a sex act was in February or March 2024. Not enough time has passed to conclude such conduct is unlikely to recur in the future.

### **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(a):

(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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered that Applicant was granted a top-secret security clearance in 2020 and held a top-secret clearance until his SCI access was denied by AGA. I considered his history of employment as a DOW contractor. I considered that he has a wife and two young sons. I considered that after his denial of SCI access, he consistently stated that the polygrapher misunderstood the statements he made during the post-polygraph interview and that he did not purposely seek out obscene cartoon images of minor children engaging in sex acts. He claimed that the obscene images popped up on his screen when he searched for anime and manga that was not pornographic.

I find the factors against mitigation more compelling. Applicant admits to viewing cartoon images of underage girls posing provocatively or involved in sexual activity. Such images violate Title 18 USC 1466A. He initially indicated that he was going to continue to search the websites PIXIV and Rule 34, even though he was aware that on occasion inappropriate and illegal cartoon images of underage children are posted on these sites. His past statements raise doubts about mitigation in this case. Paragraph 2.b of Appendix A of the Directive states that "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of national security."

I considered the potentially disqualifying and mitigating conditions as well as the facts and circumstances surrounding this case. The security concerns under Sexual Behavior, Personal Conduct, and Criminal Conduct are not mitigated.

### **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
Subparagraph 1.b:	For 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ERIN C. HOGAN  
Administrative Judge