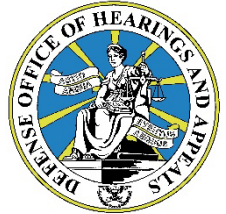




**DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
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Applicant for Security Clearance)
_____)

ISCR Case No. 25-01239

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

07/28/2026

Decision

FOREMAN, LeRoy F., Administrative Judge:

Applicant did not mitigate the security concerns under Guidelines D (Sexual Behavior) and J (Criminal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 30, 2024. On January 16, 2026, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines D and J. Applicant answered the SOR on February 19, 2026, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on April 29, 2026. A complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on May 11, 2026, and responded. The case was assigned to me on July 15, 2026.

The Government's FORM consists of the SOR (Government Exhibit (GE) 1), Applicant's answer to the SOR (Answer; GE 2), and the documents in support of the allegations in the SOR (GE 3-5). GE 3 through 5 are admitted into evidence, without objection. Applicant's response to Government's FORM is a narrative that reiterates the facts he asks to be considered towards mitigation. He also objects to the statement in section "V Conclusion" of the FORM that reads, "Applicant's drug involvement creates doubts..." and asserts he has never had any drug involvement. Nowhere in the record is there evidence to suggest drug involvement nor has such an allegation been brought forth. Applicant's response to the FORM and his objection to the statement indicating "drug involvement" is noted for the record. Any reference to drug involvement in the FORM is deemed a scrivener's error.

Findings of Fact

The SOR alleges Applicant's conviction in March 2000 on two counts of "aggravated assault – victim helpless or incapacitated" under Guideline D (SOR ¶ 1.a) and cross-alleges it under Guideline J (SOR ¶ 2.a). (GE 1) He pled guilty and was sentenced to seven years flat in state prison. (GE 3 at 25) He was incarcerated from July 2000 to December 2004 and was released on parole. (GE 3 at 25) Applicant disclosed his conviction in his 2024 SCA and he admitted to the allegations in his Answer. (GE 2-3)

Applicant was also sentenced to lifetime registration as a sex offender. (GE 2, 4-5) He has registered in the Sexual Offender Registry. (GE 4-5). Registration documentation from the state where he was convicted provides the following details, "Level: Tier 2 – Repetitive Compulsive," a conviction date of March 15, 2000, a description of "Aggravated Sexual Assault Victim Helpless or Incapacitated," adding "Offender sexually assaulted a 5 year-old [sic] and 16 year-old [sic] female acquaintance." (GE 4) Registration documentation from another state provides a conviction date of March 15, 2000 for two counts of "Aggravated Sexual Assault," committed on September 1, 1998 and January 1, 1999.¹ The document states "Not Applicable" to the question of if the victim was a minor and indicates "[State] law does not require the website to indicate whether the victim is or is not a minor for offenders who were convicted before November 30, 2006." (GE 5) The record is void of any police reports, court documentation, or other information or specific details about Applicant's criminal conduct.

Applicant disclosed in his SCA that as a condition of his parole, he was required to attend weekly group therapy sessions under the supervision of a licensed clinical social worker (LCSW). He states he complied and regularly attended therapy beginning in December 2004. He stopped attending in approximately 2008, after he was "released" of the condition "upon recommendation" by the LCSW. (GE 3 at 23) In his Answer, he states he also has "yearly evaluations" as a parole requirement. (GE 2) However, the record is void of documentation in support and he also has not provided evidence of a favorable prognosis from a qualified mental health professional.

¹ Applicant lists date of offense as May 1999 (estimated). (GE 3 at 24)

Applicant is 50 years old. He was 22 years old when he committed the crime. (GE 3) Since his release from prison, he has complied with all the terms and conditions of his parole. (GE 2) In his Answer he states, "I am still currently on parole (Community Supervision for Life) as one of my release requirements."² (GE 2) He went back to college and received a bachelor's degree in May 2009.³ (GE 2; GE 3 at 8) He has been steadily employed for the past 20 plus years and began his current employment in June 2019. (GE 3 at 9) He was employed at his job before this from November 2005 to April 2019, leaving because the company went out of business. (GE 3 at 10) He owns his home since 2011, married his wife in 2014, and has two children, born in 2015 and 2022. (GE 3 at 6, 14, 17-18) He asserts that he has "had a spotless record in the 21+ years... since [his] prison release." (GE 2)

Policies

This case is adjudicated 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) implemented by the DOD on June 8, 2017.

"[N]o 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 War or his designee to grant applicants 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 § 2.

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, an administrative judge applies these guidelines 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 and 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

² In his SCA, Applicant provided his parole dates from December 2004 to December 2024. (GE 3 at 25) Given this statement in his Answer, I find his parole end date entry in his SCA was inadvertent.

³ Applicant attended university full-time from 1994-1999. He returned to the same university and attended part-time from 2007-2009. (GE 3 at 8)

extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of War 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline D, Sexual Behavior

The concern under this guideline 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.

Applicant's admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline:

AG ¶ 13(a): sexual behavior of a criminal nature, whether or not the individual has been prosecuted; and

AG ¶ 13(c): sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.

The following mitigating conditions are potentially applicable:

AG ¶ 14(a): the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;

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;

AG ¶ 14(c): the behavior no longer serves as a basis for coercion, exploitation, or duress; and

AG ¶ 14(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.

Mitigation under AG ¶ 14 is not established. Although the behavior happened long ago and there is no evidence of subsequent conduct of a similar nature, little is known about the circumstances surrounding the behavior to be able to deem that it is unlikely to recur. It is also unclear from the record evidence who in Applicant's circle, social and professional, is aware of the behavior to be able to determine that it can no longer serve as a basis for coercion, exploitation, or duress. His compliance with his requirement to register as a sex offender does effectively make the information publicly available, however, that does not presume that people important to him are all aware.

Lastly, although Applicant asserts that he completed all the therapy requirements and receives annual evaluations, the record is void of documentary evidence in support. Granted, there is no evidence to indicate any parole violations, nor have Applicant's assertions been refuted. However, the burden of mitigation is his, and he did not provide sufficient documentary evidence to support that he has successfully completed an appropriate program of treatment or has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.

Guideline J (Criminal Conduct)

The security concern for criminal conduct is set out in AG ¶ 30: “Criminal activity creates doubt about an Appellant’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 following disqualifying conditions are potentially applicable under this guideline:

AG ¶ 31(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; and

AG ¶ 31 (c) individual is currently on parole or probation.

Applicant’s admissions and the record evidence of his conviction establish disqualification under AG ¶ 31.

The following mitigating conditions are potentially applicable:

AG ¶ 32(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

AG ¶ 32(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.

Mitigation under AG ¶ 32 is not established. Applicant is credited for his successes since his release, to include completing university and receiving his bachelor’s degree, maintaining 20 plus years of continued employment, owning a home, getting married, and having children. The circumstances surrounding the criminal behavior are unknown. However, the fact that he remains on parole and will continue to be supervised for the rest of his life, highlights the egregiousness of his crime and the determination by the state that continued supervision is necessary. So, although the behavior happened over twenty years ago and there has been no recurrence of any criminal activity, given the egregiousness of the crime, the lack of information about the circumstances surrounding it, and no documentation in support of therapeutic rehabilitation, I am unable to find that the criminal behavior is unlikely to recur.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines D and J in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guidelines D and J and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised under Guidelines D (Sexual Behavior) and J (Criminal Conduct).

Formal Findings

I make the following 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:

Paragraph 1, Guideline D:	AGAINST APPLICANT
Subparagraphs 1.a:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a:	Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge