DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 24-01190
	)	
Applicant for Security Clearance	)	

Appearances

For Government: George Hawkins, Esq., Department Counsel

For Applicant: *Pro Se* and
Personal Representatives: Applicant's Father and Two Sons

07/22/2026

Decision

HOGAN, Erin C., Administrative Judge:

Security concerns arising under Guidelines E (personal conduct) and M (use of information technology) are mitigated. However, security concerns under Guidelines D (sexual behavior) and Guideline I (psychological conditions) are not mitigated. Eligibility for access to classified information is denied.

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Statement of the Case

Applicant's most recent Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SCA) was submitted on April 12, 2022. (Government Exhibit (GE 1)) On November 26, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines D, I, M, and E. The DCSA acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

On February 13, 2025, Applicant answered the SOR. He was represented by counsel when he answered the SOR but represented himself during the hearing. On April 2, 2025, Department Counsel was ready to proceed, and on August 5, 2025, the case was assigned to me.

On September 3, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that his hearing was scheduled on October 23, 2025. On October 22, 2025, the hearing was cancelled because all administrative judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding. On December 9, 2025, DOHA rescheduled the hearing for March 16, 2026. The long delay was to accommodate the availability of expert witnesses for each party. The hearing was convened as rescheduled and was held on March 16-17, 2026. Applicant represented himself and his father and two of his sons served as personal representatives during various parts of the hearing.

The Government called one witness and offered 15 exhibits, Government Exhibits (GE) 1-15, which were admitted without objection. Applicant called nine witnesses and initially offered 14 exhibits which were marked as Applicant Exhibits (AE) A – N. Applicant withdrew the proposed exhibits AE B and AE K. The remaining 12 exhibits, AE A, AE C – J, and AE L - N were admitted into evidence without objection. (Tr. 49 – 52) On April 2, 2026, DOHA received the transcripts of the hearing. The transcript for the first day of the hearing is referred to as "16 Mar Tr." The transcript for the second day of the hearing is referred to as "17 Mar Tr."

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

Statement of Facts

In Applicant's answer to the SOR, he admitted in part and denied in in part the allegations in the SOR. His admissions are accepted as findings of fact. He also provided extenuating and mitigating information. (Response to SOR)

Applicant is a 52-year-old employee of a DOD contractor who has worked for the same employer (Employer A) since March 2020. He does not have a security clearance. He has two bachelor's degrees and four master's degrees. He also earned two computer certifications. He has not served in the military. He is a naturalized United States citizen. He was originally a citizen of Sri Lanka. He moved with his family to the United States in June 1989. He became a United States citizen on June 2, 1995. He and his wife have been married for 29 years and have three adult sons, ages 26, 24, and 22. (Tr. 77- 83; GE 1)

SOR Allegations

The SOR alleged allegations under four guidelines, Guideline D, Sexual Behavior; Guideline I, Psychological Conditions; Guideline M, Use of Information Technology; and Guideline E, Personal Conduct. The SOR allegations are summarized under each guideline below:

Guideline D - Sexual Behavior

The SOR allegations under Guideline D include that from approximately 1986 to approximately 2018, Applicant engaged in public masturbation on multiple occasions (SOR ¶ 1.a: GE 5 at 42; GE 6; GE 7 at 8, 17; GE 9 at 50-51, 103-111); in approximately 1986, he engaged in public masturbation in the woods near his boarding school when he was a student (SOR ¶ 1.b: GE 6 at 10; GE 7 at 1, 8; GE 9 at 9, 104); in approximately 1989, he engaged in public masturbation in the woods near his home (SOR ¶ 1.c: GE 6 at 10; GE 7 at 1, 8; GE 9 at 99); in approximately 1991, he engaged in public masturbation in a public park (SOR ¶ 1.d: GE 7 at 2, 8; GE 9 at 4, 10); and in approximately 1992 or 1994, he engaged in public masturbation at a public space near his undergraduate university (SOR ¶ 1.e: GE 7 at 2; GE 9 at 4,10, 105)

Additional Guideline D allegations include: in approximately 1994; Applicant engaged in public masturbation in the woods near his apartment (SOR ¶ 1.f: GE 9 at 4, 105); from approximately 1997 to approximately 1998, he used his company computer to view pornography approximately 20 times while employed at Employer A (SOR ¶ 1.g: GE 5 at 42; GE 7 at 2, 8; GE 9 at 4); from approximately 1997 to approximately 1999, he masturbated after hours at work at Employer B (SOR ¶ 1.h: GE 9 at 4, 107); from approximately 1999 to approximately 2008, he masturbated in various locations and work spaces at Employer C, including a photo-copy room, a bathroom, and a lab (SOR ¶ 1.i: GE 7 at 2,18; GE 9 at 16-17, 50); from approximately 2001 to at least approximately 2018, he masturbated while viewing an image of his sister-in-law, who was a minor at the time (SOR ¶ 1.j: GE 5 at 30, 45; GE 6 at 2-4; GE 7 at 2-3, 18; GE 9 at 5, 23, 111-112); from approximately 2004 to approximately 2009; he used his company computer to view and download pornography on multiple occasions while working for Employer C (SOR ¶ 1.k: GE 5 at 42; GE 7 at 8; GE 9 at 10-11, 107-109); and in approximately 2018, he engaged in public masturbation while in his car in a parking lot at Employer D. (SOR ¶ 1.l: GE 10 at 5-6)

Incidents of Masturbation in Public Places

Applicant has a history of masturbating in public places starting when he was 12 and ending around the fall of 2016. He initially disclosed his history of public masturbation during a polygraph interview on July 31, 2008. A government contractor sponsored him for an SCI clearance. He was required to take a polygraph as part of the investigation. He told the polygrapher that he first started to masturbate publicly at age 12 in 1986 when he was in boarding school. Once a month, he would go into the woods on the school grounds and masturbate. He continued this conduct until he left the school in 1987. (GE 7 at 1) Between 1990 and 1991, when he was 15, he engaged in public masturbation in the woods near his home. He estimates that he masturbated in the woods between one to three times a month during this timeframe. In approximately 1991, when he was 17, he masturbated in a local park. In 1992 or 1994, Applicant would masturbate near a lake located near his dormitory when he was a college student. (GE 7 at 2; GE 9 at 4, 10, 105) In 1994, Applicant engaged in public masturbation in the woods near his apartment. He was 20 years old at the time. (GE 9 at 4, 105) He got excited about the possibility of being caught masturbating in the woods, but he never masturbated in front of other people and was never seen by other people. (17 Mar Tr. at 149-156; GE 5 at 19-20; GE 7 at 1-2; GE 9 at 4, 9-10)

On March 16, 2009, Applicant was interviewed again. He told the investigator that from 1990 to the present (March 2009), he would masturbate in public areas such as the laboratory, his desk, (cubicle) and the conference room at work. He would do this when no one else was around. He admits that there were times when he masturbated in his cubicle, he heard other people in the office. But they could not see him, and he could not see them. He never got caught masturbating. He estimated that he masturbated at work about five times a year, two to three times a week over a one-to-two-week period. He told the investigator that he masturbates to relieve stress. The last time he masturbated at

work was on March 13, 2009, three days before his polygraph interview. (16 Mar Tr. 62-63, 105; GE 5 at 19-20; GE 7 at 2; GE 9 at 9, 17-18, 102, 120)

In his August 19, 2009, response to the denial of SCI access in May 2009, Applicant indicated that the last time he masturbated in public places was in 2001 or 2002 in a public park. After 2009, he last masturbated in public in the parking lot of his workplace (Employer D) in approximately fall 2016. (16 Mar Tr. at 110 -114; GE 9 at 10, 47)

Under-age Sister-in-law

During the March 16, 2009, interview, Applicant told the investigator that once in 2001, he walked by a bedroom where his 12-year-old sister-in-law was sleeping. The door was open and the top of her pajamas were unbuttoned and her breasts were exposed. He looked at her for three or four seconds then left. Between 2006 to 2007, Applicant had photos of his sister-in-law on his laptop. She was fully clothed in the photos and was between 15 to 17 years old. On two or three occasions, he masturbated while viewing these photos of her. He does not consider himself a pedophile, and he never touched his sister-in-law inappropriately. (17 Mar Tr. at 66, 171-173; GE 7 at 2-3; GE 9 at 5-6, 24-25, 81)

During a personal subject interview on September 6, 2019, Applicant disclosed that he began to fantasize about his sister-in-law in 2001. She was born in 1989, so she was 11 when he began to have fantasies about her. He indicated that the last time he fantasized about his sister-in-law was in May 2018. (GE 5 at 30; GE 9 at 106-107)

Viewing Pornography at Work

During the July 31, 2008, interview with an investigator conducting his polygraph, Applicant disclosed that he viewed pornography at work using his work computer and by using his personal computer and accessing his employer's internet connection at work. Between approximately 1997 to approximately 1998, he viewed pornography at work on at least 10-20 occasions while working as a contractor for Employer B. In 2003, while working for Employer C, he viewed pornography at work on one occasion in 2005, once in 2006, and the weekend before the date of the interview (in July 2008). (GE 7 at 2; *see also* 17 Mar Tr. at 119-120) From approximately 2004 to approximately 2009, he used his company computer to view and download pornography on multiple occasions while working at Employer C. (17 Mar Tr. at 111-114, 119; GE 5 at 42; GE 9 at 10-12, 102-109)

On May 7, 2009, another government agency denied Applicant's security clearance based on Criminal Conduct, Sexual Behavior, Use of Information Technology Systems and Personal Conduct. (GE 7) This denial was not alleged in the SOR. However, the underlying conduct was alleged. In other words, his security clearance was denied based on the alleged conduct in the SOR up until May 2009.

Guideline I - Psychological Conditions

There are nine allegations under the Psychological Conditions concern to include:

SOR ¶ 2.a cross-alleges the allegations under Guideline D, Sexual Behavior, specifically SOR ¶¶ 1.a -1.l.

SOR ¶ 2.b alleges under that from approximately 1985 to at least September 2023, Applicant experienced suicidal ideations. (GE 5 at 20-21; GE 6 at 4; GE 7 at 13; GE 9 at 33-35)

SOR ¶ 2.c alleges Applicant attempted to commit suicide in approximately 1985; 1990; and 1997. (GE 5 at 20-21. 34-35; GE 6 at 4; GE 7 at 13; Response to SOR, Enclosure 6) The incident in 1985 occurred when he was 13 and happened when he was in boarding school. He briefly stopped talking because he was homesick. (GE 6 at 4) The incident in 1990 happened when he was 16. He attempted to kill himself by ingesting hydrogen peroxide. (Answer to SOR; Encl 6 at 3) In 1997 when he was 23, he ingested a bunch of Tylenol pills. He was living with his wife and brother at the time. He did not have to go to the hospital. (GE 5 at 20-21) Applicant described this incident as a cry for help rather than a suicide attempt. (17 Mar Tr. at 159-160)

It was not clearly alleged in the SOR, but when Applicant was 15, he attempted to cut his wrists. He did not cut to the point where there was blood. He just had superficial wounds. He claims he did this to get his mother's attention. (GE 6 at 4-5; GE 9 at 33) There was also an incident where he put a bag over his head and lay down on his bed to sleep. A friend came in the room, saw what Applicant was doing, and tore a hole in the bag so Applicant could breathe. He then left the room. They never discussed it. (17 Mar Tr. at 160-162; GE 9 at 33) Applicant believes that he made these suicidal gestures to get attention. He did not intend to end his life. (GE 6 at 4) Because these incidents were not alleged in the SOR, I will only consider them under matters of extenuation and mitigation.

SOR ¶ 2.d alleges Applicant was hospitalized for mental health concerns in approximately 1991. (GE 7 at 13-14; GE 9 at 34) This actually occurred in 1992 during his freshman year in college. He was seeing a psychiatrist who became concerned because she thought he said something that indicated he was suicidal. She reported it to her supervising doctor. Applicant was taken to the emergency room at the university hospital. He was discharged after his parents arrived at the hospital. He made no suicide attempt during this incident. (GE 6 at 4; Answer to the SOR, encl 6 at 3; GE 9 at 33-34)

SOR ¶ 2.e alleges in approximately January 2002, he attempted to suffocate his child by smothering him with a pillow. (Answer to SOR, Encl 6 at 1; GE 9 at 76) Applicant vehemently denies this. At the time of this incident, Applicant was sleep deprived. One of his sons cried a lot when he was an infant. He would wake up crying every hour during the night. One night, Applicant was attempting to comfort him and get him to stop crying. He briefly picked up from his car seat and put him on the bed. His son's head rolled into

the pillow. After several seconds, he picked up his son. He had no intent to suffocate him. He was mortified and immediately told his wife because he was concerned about what he had done. His son is now a young adult. I find for Applicant on this allegation. This was a one-time occurrence. While this was serious, it lasted only several seconds, and Applicant immediately sought help. (17 Mar Tr. at 134-145; Answer to the SOR at 13; GE 9 at 72)

SOR ¶ 2.f alleged in approximately 2011 and 2018, Applicant sought treatment from Dr. MM, who indicated Applicant had a history of Major Depressive Disorder. (GE 5 at 20; GE 6)

SOR ¶ 2.g alleged Applicant sought treatment from Dr. KT from approximately 2023 to 2024. Dr. KT diagnosed him with adjustment disorder. The primary focus of the therapy was initially to help Applicant deal with the breakup of his marriage. Later it progressed to couple's counseling. (GE 5 at 246-268; GE 6; Response to SOR, encl 5)

SOR ¶ 2.h alleged the January 2024 and February 2024 evaluations of Applicant by Dr. GW, a licensed psychologist approved by the DOD. Based on background information, clinical interviews and observations, and an objective personality assessment, he was diagnosed with recurrent Major Depressive Disorder, in remission, and a provisional diagnosis of borderline personality disorder. Dr. GW concluded that Applicant presents with a condition that could pose a significant risk to his judgment, reliability, trustworthiness, and ability to protect classified information. The evaluator concludes Applicant has engaged in a pattern of impulsive, self-destructive behaviors including public masturbation and misuse of workplace computers and facilities. Dr. GW concludes that Applicant has limited insight regarding his history of public masturbation, psychiatric difficulties, and rule violations. This raises concerns about his judgment, reliability and trustworthiness. (GE 10; GE 15)

Summary of Evaluation of DOD-Approved Psychologist - Dr. GW

On March 17, 2024, Dr. GW issued a report evaluating Applicant's mental health at the request of the DCSA. Dr. GW considered the following information for her report: a review of background information, including mental health treatment, Investigative Results Report and records provided by DCSA. Applicant's most recent SCA submitted on April 12, 2022; additional data collected via clinical interview, observations, and administration of the Personality Assessment Inventory (PAI). (GE 10 at 2)

Dr. GW noted that Applicant arrived on time for his scheduled evaluation. The evaluation was conducted via teleconference. Dr. GW described Applicant as alert and fully oriented. He was forthcoming and cooperative during interactions. His thought content was tangential at times and his responses to questions were over-abundant at times. He did not appear to be making attempts at deception during the evaluation. (GE 10 at 8)

Dr. GW notes that Applicant's self-reported history and background information suggest symptoms of borderline personality disorder although his current symptoms may not meet the full criteria for a diagnosis. For example: starting at age 11, he exhibited frantic efforts to get his mother's attention, including one suicide attempt and a suicidal gesture. As an adult, he attempted suicide by overdose to get his spouse's attention. He has had an unstable relationship with his spouse as indicated by his self-reported efforts to seek counseling to address their marital difficulties and their recent separation, divorce proceedings and reunion. He has engaged in a pattern of impulsive, self-destructive behaviors such as public masturbation, misuse of workplace computers and facilities. At least one supervisor indicated that Applicant has difficulties controlling his anger in the workplace. Applicant told Dr. GW that he engaged in public masturbation, in part, to "manage his stress" and control his emotions. (GE 10 at 10)

Dr. GW diagnosed Applicant with F.33.4 Major Depressive Disorder, Recurrent, in remission and F60.3 borderline personality disorder (provisional). Dr. GW notes that Applicant's psychiatric difficulties cannot be a basis for vulnerability to blackmail or coercion because his history is well-known to others in his life. While he was forthcoming about his history of psychiatric difficulties and public masturbation, he has limited insight as to why this pattern and other factors (i.e., suicide attempts, IT violations) raise concerns about his judgment, reliability, and trustworthiness. Applicant noted, "They (USG) made a mistake, fantasies are fantasies. . . it's none of the government's business. I do not have a national security problem and I can't be blackmailed." Applicant is not currently engaging in psychiatric treatment. (GE 10 at 11)

Dr. GW concludes:

> Currently, Applicant presents a condition at this time, that could pose a significant risk to his judgment, reliability, trustworthiness, and ability to protect classified information. This subject has demonstrated an inconsistent track record of seeking help when needed. He detailed significant marital and familial stressors that are ongoing. When [Applicant] was asked about his last incident of public masturbation in the workplace, he indicated that he was in a parking lot and could not have been detected. With regard to his public masturbation, he did not appear to recognize the legal and occupational concerns this pattern raises about his judgment regardless of whether it is detected. Given his history, this behavior is likely to recur. (GE 10 at 11)

Dr. GW's Hearing Testimony

Dr. GW testified during Applicant's hearing. She is a clinical psychologist. She earned a Doctor of Psychology (PsyD) in 2009. She earned her master's degree in 2006. She currently has a practice that provides individual therapy for adults with PTSD, anxiety, depression, sexual assault, substance abuse, interpersonal relationship concerns, life concerns, and chronic medical illnesses. She also conducts comprehensive psychological evaluations and assessments for DCSA. She entered a contract with DCSA

in 2018. She has conducted about 200 evaluations. Her testimony and resumé qualify her as an expert. (16 Mar Tr. at 21-30; GE 14)

During Applicant's evaluation, Dr. GW conducted two clinical interviews and administered the PAI. She also based her evaluation on observations and a records review. The interviews were virtual. The first interview lasted 90 minutes. The second interview lasted 60 minutes. Dr. GW testified that the PAI revealed no clinically significant findings. She said Applicant tended to present himself in a favorable light, relatively free of common shortcomings and problems that many people admit to experiencing. (16 Mar Tr. at 31-34)

Before the interview, Dr. GW reviewed several documents to include Applicant's security clearance application and investigative information from 2018; Dr. MM's psychiatric evaluation; and others that were indicated in the referral and consultation page from DCSA. She also reviewed Applicant's interrogatory response, which included some of his medical records (GE 5). Dr. GW testified that her opinion has not changed after review of other medical provider's statements. She indicates that Applicant mostly had clinical encounters with various providers, but not a complete psychological evaluation that included a through records review, testing, assessments, and all the background information that she reviewed. (16 Mar Tr. at 34-36)

Dr. GW's diagnoses of Applicant are major depressive disorder, in remission, and a provisional diagnosis of borderline personality disorder. She notes that borderline personality disorder is more specific than the general term personality disorder. Her diagnosis of borderline personality disorder is provisional because she only met with Applicant on two occasions and thought she would need more time to evaluate him. (16 Mar Tr. at 39)

Dr. GW looked at the symptom criteria for borderline personality disorder in the Diagnostic and Statistical Manual for Mental Disorders (DSM-5) and concluded Applicant had a pervasive pattern of instability in interpersonal relationships, self-image, and affects, marked impulsivity beginning in early adulthood and present in a variety of contexts. To make the diagnosis, there need to be at least five additional symptoms. Dr. GW opined that Applicant met the criteria of a "pattern of unstable and intense interpersonal relationships, characterized by alternating between extremes of idealization and devaluation." (16 Mar Tr. at 39)

Dr. GW concluded that Applicant met the criteria for impulsivity including sexual behavior and impulse behavior at work such as misusing IT systems. She also considered his history of recurrent suicidal behavior, gestures, and threats. Dr. GW said it was not clear that he met the criteria for chronic feelings of emptiness. She felt that needed more clarification. (16 Mar Tr. at 40)

Dr. GW's prognosis of Applicant about her provisional diagnosis of borderline personality disorder was that Applicant demonstrated an inconsistent track record of seeking help when needed. He detailed significant marital and family stressors. When

asked about his last incident of public masturbation in the workplace, he indicated that he was in a parking lot and could not be detected. She notes he did not appear to recognize the legal and occupational concerns this pattern raises about his judgment, regardless of whether it was detected or not. It is her opinion that considering Applicant's history this behavior is likely to reoccur. (16 Mar Tr. at 41-42)

Dr. GW opines that the resolution of Applicant's marital issues would not change her opinion. It is unclear to Dr. GW that he is aware of the seriousness of his conduct and misconduct in the past. It is not clear that he was involved in any continuing treatment to address those specific concerns. It is not clear that Applicant's patterns of impulsivity have been treated. She indicates that it has been more than two years since her evaluation. (16 Mar Tr. at 43-45)

Dr. KT's Treatment of Applicant

On August 15, 2024, Dr. KT provided a synopsis of her psychotherapeutic care of Applicant. She saw him over a seven-month period between May 2, 2023, and January 23, 2024. Applicant sought mental health care to deal with the dissolution of his marriage. He and his wife had been married since 1997 and had three sons. Applicant learned from his children that his father-in-law had abused his sons. He and his wife had an argument, and she told him that she wanted a divorce. Applicant moved out of the home with his three sons and rented an apartment. He filed for divorce. Dr. KT had previously seen Applicant and his wife on issues related to intimacy in 2019. (GE 5 at 247)

Dr. KT met with Applicant on a regular weekly basis to help him with his emotional reactions including mood swings that were disrupting his life. Dr. KT noted he had brief periods of suicidal ideation throughout that time but never had an intent or plan. She diagnosed him with adjustment disorder. He gradually began to feel more stable and focused on the future and how best to care for his sons. All his sons were in college at the time and had some mental health challenges. In September 2023, he and his wife began to discuss possibly reuniting. At that time, Dr. KT's therapy focused on couples therapy rather than helping Applicant navigate the end of his marriage. Applicant's wife joined the therapy sessions. Over the fall, they had an up and down relationship characterized by fighting. By December 2023, issues were mostly being dealt with. Applicant felt stable mood-wise and good about the progress he was making with his wife and family. The last time she met Applicant was in January 2024. Applicant had resolved much of the discord with his wife and was feeling positive about their future. (GE 5 at 247-248)

Dr. KT's Hearing Testimony

Dr. KT testified during the hearing. Her credentials include a master's degree in psychiatric nursing and doctorate in human sexuality. She is licensed as an advanced practice registered nurse and a nurse psychotherapist. Over the past 35 years, she has worked in the field of sexuality and gender. She has a private practice where she sees patients for individuals and couples in group therapy. She is the Director of Clinical

Services at [University] Sex and Gender Clinic. She is on the faculty of the Department of Psychiatry in [University's] medical school. She trains third year psychiatric resident physicians. (17 Mar Tr. at 4-6)

Dr. KT reviewed Dr. GW's evaluation and correspondence from Dr. MM. (17 Mar Tr. at 7-8) Dr. KT commented on Dr. GW's conclusion of a provisional diagnosis of borderline personality disorder. She indicated that she had spent a long time working with Applicant in therapy, and she did not conclude that he had a personality disorder. She notes Applicant and his wife had their ups and downs over the years, but they maintained their marriage for many years. He has good relationships with his children. He has had some difficulty with his parents, but that has been reconciled. He has friendships. Based on these facts, Dr. KT did not conclude that he has a personality disorder. She indicates that one cannot diagnose a personality disorder in a brief evaluation. You have to spend time with the person to get to know them because there can be personality traits. (17 Mar Tr. 8-9)

Dr. KT describes some of Applicant's personality traits as being a very sensitive and emotional person. It does not mean that he has a personality disorder. To be a disorder, it means that personality traits can be pervasive throughout one's life and impact many areas of their life – making it problematic in the execution of that life. (17 Mar Tr. at 10)

Moving on, Dr. KT testified that Applicant sought treatment from her to help him when he was going through a difficult situation – his separation and pending divorce from his wife. She diagnosed him with adjustment disorder. He has sought treatment with cognitive behavioral therapy (CBT) from Dr. MM. He also sought help from the [University] Sex and Gender clinic at least three times. Applicant seeks help when he needs it. (17 Mar Tr. at 15-16)

With regard to his sexual behavior, Dr. KT notes she saw Applicant for the first time in 2019 and that he disclosed his sexual-based fantasy and behavior as well as the polygraph interview. Dr. KT reviewed the SOR. She did not diagnose him with a sexual disorder because he does not fit the criteria for a sexual disorder. Dr. KT notes:

> Having a fantasy or any fantasies about anything, even if it's one that's, you know, deemed inappropriate or could even - - fantasy is not illegal, but the behavior would be. But an inappropriate fantasy, let me say that, that does not constitute a sexual disorder. People have all kinds of fantasies that go through their minds and it doesn't necessarily constitute a sexual disorder. The other things about masturbating, for instance, in public places, certainly it would be - - if caught, it would be illegal behavior. I get that, okay? But from a sexual disorder standpoint, unless you're attempting to expose yourself or somehow doing it when you're voyeuristically - - people sometimes will say looking at someone, watching someone and masturbating to that, would be voyeuristic. Exhibitionistic would be hoping somebody would see you. And those things were very clear that's not what

you were doing. That you had somehow learned this behavior when you were a young person and you were doing it because you felt you had nowhere else to go and to do it and were trying to essentially hide yourself. That's why it doesn't constitute sexual disorder. (17 Mar Tr. at 17)

Dr. KT admits that masturbating in a public space, such as outside in the woods or in a car in the parking lot, even though the person tries to hide himself is not considered a sexual disorder, but it could become an illegal disorder or a legal problem. If caught, there may be legal consequences. (17 Mar Tr. at 19)

To help someone with this behavior, a therapist would try to get underneath to what is causing the behavior. Dr. KT testified when she worked with Applicant and his wife initially in 2019, part of the goal was for them to find a more comfortable way to deal with sexuality in the relationship, which would help decrease Applicant's need to masturbate elsewhere. The goal is to stop Applicant's behavior of masturbating in public. (17 Mar Tr. at 19-21)

Applicant's public masturbation issue was not an issue when he returned to Dr. KT for therapy in 2023. The focus of the treatment was dealing with Applicant's relationship problem with his wife and their pending divorce and how to help his sons. In their 2023 counseling sessions, his masturbation in public issues was not a current problem. (17 Mar Tr. at 22)

Dr. KT describes Applicant as a sincere person. He was more than willing to admit and own all of things that happened to him. She prefers meeting her patients in person unless there is an emergency. Part of an assessment is observing the person, their facial expressions, mannerisms, body language. You get a better perspective in person. She usually does not meet a person through video-teleconference or a phone call unless it is an emergency. Her place of work has guidelines about when it is required to meet people face to face. (17 Mar Tr. at 25-26)

When Applicant first met with Dr. KT in March 2023, he was very concerned about his children. He had discovered that his children were being abused by their grandfather. His wife would not accept it as true. He felt compelled to get his children out of the house, so he moved out with the children because they were upset and traumatized. (17 Mar Tr. at 30-31)

Under cross-examination, Dr. KT clarified that when she diagnosed Applicant with adjustment disorder, she did not think major depressive disorder was also an appropriate diagnosis. Dr. KT was aware that Applicant had a longstanding major depressive disorder diagnosis. During his most current treatment, adjustment disorder was the current diagnosis. Adjustment disorder means that the patient is dealing with a situation, and they are having difficulty dealing with it. It is causing repercussions like mood issues or anxiety. (17 Mar Tr. at 34-35)

Department Counsel asked Dr. KT about Applicant's masturbation behaviors during his treatment from December 2024 to January 2025. She responded that they discussed whether there was anything new going on. Applicant told her "no". Department Counsel then asked Dr. KT whether he told her that he was masturbating in bed with his wife, and if so, whether it would be significant in whether Applicant had a sexual disorder. Dr. KT replied:

> Whoa. No. . . . That would be more - - let me, let me just be clear. That would be more - - you'd have to know more about it. Plenty of people masturbate with their spouse and partners at the – at their side, as long as it's an accepted behavior. You know, people masturbate. So I - - you know, I'd have to know more to see whether or not that was somehow problematic or problematic in the relationship. (17 Mar Tr. at 36)

Department Counsel followed by asking if Applicant was recently masturbating in the woods by his house during the past week, whether that would change her opinion about whether Applicant had a sexual disorder. (Note: There is nothing in the record evidence indicating this occurred.) Dr. KT explained why she did not think that Applicant had a sexual disorder:

> that he's still doing the behavior? Not necessarily, because it's not based on how often you're doing it, the - - a sexual disorder. It is, in essence, the motivation that underlies it. So when a person is – we look at this, sexual disorders include - - paraphilic disorders include voyeurism and exhibitionism. So if you're exposing your genitals for sexual gratification so that others might see, that's a sexual disorder. If you are masturbating while you're observing someone, you know, that's voyeuristic behavior. In the case of [Applicant], he was not doing those two things. He was hiding his masturbatory behavior from his wife, you know, earlier from his parents and his school and things like that. So no, it would not. (17 Mar Tr. at 37-38)

Dr. KT wrote a letter dated August 15, 2024, that was attached to Applicant's response to the SOR. She indicated that she saw Applicant individually and in couples therapy mostly through the latter half of 2023 and one session of individual therapy in January 2024. She noted in her letter that she saw Applicant on a regular basis dealing with his emotional reactions including mood swings that were disrupting his life. She noted that he had brief periods of suicidal ideation throughout that time but never had an intent or plan. Dr. KT testified that Applicant was having a difficult time when he separated from his wife. During therapy they always ask patients "How is their mood? Are you having any suicidal thoughts." Applicant would occasionally say "yes", but he had no intent or plan. He was distressed and upset. (17 Mar Tr. at 41-42; Response to SOR, enclosure 5)

Dr. KT first met Applicant in 2019 when he and his wife came to the Sex and Gender Clinic seeking help with marital distress. Dr. KT was part of a team who initially met with them for an evaluation. She also met with them on one occasion without the team. She did not see Applicant again until 2023 when he contacted her for help with

dealing with his marital separation. She never saw Applicant specifically to deal with his masturbation issues. The team assessed the issues as marital discord instead of a sexual disorder diagnosis. The team recommended couples therapy. She describes Applicant's prognosis dealing with the marital issue as pretty good because he has reunited with his wife and they are working on the relationship. (17 Mar Tr. at 43-44)

Under re-direct, Applicant asked Dr. KT whether she ever treated him for suicidal ideation. She said that the treatment was focused on making sure that he was okay to make important decisions and to navigate his life. Dr. KT said that when someone says I'm depressed or I am contemplating suicide, you want to navigate the situation to get through it. Dr. KT's goals in therapy was to make sure Applicant was stable and able to deal with the situation. She notes that Applicant did this. He continued to help his sons in every way that he could. He continued to work on his relationship with his wife, and they decided to reunite. Dr. KT indicated Applicant's focus on figuring out how to handle the challenging issues in his life is a strength. (17 Mar Tr. at 45-48)

Psychiatric Evaluation of Dr. MM

Applicant saw Dr. MM on January 8, 2011, for two days of psychotherapy. He also saw Dr. MM in May 2018. On September 25, 2019, Dr. MM completed a short summary of his treatment of Applicant on a form titled "Authorization for Release of Medical Information Pursuant to the Health Insurance Portability and Accountability Act (HIPAA). He answered, "yes" in response to the question, "Does the person under investigation have a condition that could impair his or her judgment, reliability, or trustworthiness?" Dr. MM described the nature of the condition and the extent and duration of the impairment or treatment as

> Carried a diagnosis of MDD (major depressive disorder) beginning at 11 years old. Not symptomatic at the last evaluation. Also had a personality disorder with rejection sensitivity. The latter is typically more enduring; was primary focus of our last visit during which time we did couples' work. No contact since 5/4/2018. (GE 14)

Upon receiving GE 14 from the Government. Applicant contacted Dr. MM to ask what it said because he wanted to make sure he got the words and understood correctly. He also mentioned to him that he was not upset. Applicant said, "It is what it is and life goes on." Dr. MM responded on March 13, 2026. He wrote that if the government is going to deny him a job, that it may help if he spoke to them. Dr. MM said, "the phrasing of their question using the word 'could' means that checking the 'yes' box is an extremely low bar." He said it is like asking "Is it conceivably possible that something bad might happen in the future due to psychological factors?" Dr. MM would answer this as "Yes, absolutely, for 100% of people." He said a better question would be "Is the individual currently at low, medium or high risk of making significant errors in their workplace due to a psychological factor?" If that were the question, he would describe Applicant as being at "low risk" based upon recent diagnostics. Dr. MM says no one is at zero-percent risk. (AE L)

Dr. MM was also concerned that the Government did not consider the fact that Applicant's symptoms resembled a personality disorder at initial presentation; however, they likely had a different origin, more related to post-traumatic stress disorder and relationship problems. Dr. MM's notes indicated "rule out" personality disorder. He asked Applicant whether another therapist had diagnosed him with borderline personality disorder. Dr. MM concluded by stating that he was happy to discuss this with Applicant further or to discuss this with the Government. (AE L)

Applicant's Response to the SOR contained a September 2, 2024, e-mail from Dr. MM to Applicant. He told Applicant that he was unaware of any current diagnosis related to Applicant's mental health. On the DOD forms, he suggested the diagnosis be "no diagnosis, history of PTSD." Treatment provided was individual psychotherapy. Reason for treatment was "to address symptoms of PTSD, including depression, shame and relationship problems." (Response to the SOR, encl 7)

> Dr. MM said the specific treatment format was Team-CBT, which includes "empathetic support, cognitive restructuring, motivational exercises, exposure and response prevention." He suggested that Applicant could state "treatment outcome was excellent, including an elimination of symptoms and return to normal functioning, as evidenced by consistent positive mood, lack of PTSD symptoms, resolution of marital problems, and overall improvement in family life." (Response to SOR, encl 7)

Treatment with Dr. KD

In 2018, Applicant sought therapy from Dr. KD to help him establish healthier communication practices with his wife. In 2023, he sought therapy to help him process feelings regarding apparent abuse of his sons by their paternal grandfather. Applicant discontinued service on April 3, 2024. Dr. KD's initial diagnosis in 2018 was F43.23, adjustment disorder and depressed mood. Dr. KD's most recent diagnosis was F43.23, adjustment disorder with mixed anxiety and depressed mood and Z63.0 Relationship Distress with Spouse or Intimate Partner. (GE 5 at 86-218)

Assessment of Dr. FB [University] Sex and Gender Clinic, Department of Psychiatry and Behavioral Sciences

On January 31, 2025, Applicant sought an evaluation from Dr. FB's clinic to determine whether he had a sexual disorder, and, if so, whether he needed treatment. This was motivated by Applicant applying for a security clearance. Dr. FB noted concerns were raised because Applicant disclosed during a prior polygraph examination that he had a fantasy about having sex with his wife and her younger sister. Dr. FB notes that this was just a fantasy and there were no attempts in real life to enact the scenario. While Applicant's fantasy began when his sister-in-law was 11 years old, the turn on for him was that it was his wife's sister, not the fact that she was a child. Applicant also provided information about

masturbating in his car. Dr. FB notes the intent was not to be seen or to engage in voyeuristic behavior. (Answer to SOR, Encl 6)

Dr. FB states they found no evidence that Applicant had a pedophilic disorder (including no evidence of pedophilia) and he is not in need of treatment. Aside from disclosing sexual information during polygraph assessments, Applicant also disclosed that he once briefly tried to get his infant son to stop crying by placing a pillow over his mouth for one second. There was no intent to harm his son. He observed Applicant to be a loving father. (Id.)

Dr. FB describes Applicant as "an emotionally reactive person who can easily be upset and depressed." He has a history of depression, now in remission. If he were to need additional therapy in the future, he has the motivation and insight to seek it. (Id.)

Dr. AG, a resident of Dr. FB, conducted Applicant's evaluation. She covered his psychiatric history, to include his feelings of depression while in high school. His medical records at the clinic indicated he attempted suicide at age 16 by ingesting hydrogen peroxide. Applicant indicates in retrospect that he did not want to die. He continued to suffer depression while in college. During his first year of college in 1992, he was sent to the emergency room by a university psychiatrist out of concern that he was suicidal. He was offered Prozac, but he refused it, and he was subsequently discharged. (Id.)

Other periods of treatment included reading a book on cognitive behavioral therapy (CBT) for depression and anxiety in 1993 which he found helpful; from 2000 to 2003 he had weekly CBT sessions with a therapist; in 2011, he flew to another state and had 13 hours of CBT for marital problems over a two-day period. In 2018, he returned to the same practitioner for six hours of CBT in one day related to his marital problems. (Id.)

Applicant discussed his sexual history to include his use of pornography and masturbation. He disclosed that he occasionally masturbated at work, to include ten times while at work between 1997 to 1999. He took steps to ensure that it was private. He did not want to be seen by other people at work. He indicated that he masturbated in his car on one occasion. He denies sexual behavior with a minor. He disclosed that he had sexual fantasies that involved his wife and sister-in-law when his sister-in-law was underage. He no longer fantasizes about his sister-in-law. (Id.)

Applicant denies having a sex addiction. He still watches pornography but watches it at home in private. The last time he looked at pornography at work was in 2014. He has not masturbated outside of his home in many years. He denies any attraction to children under the age of 18. (Id.)

In 2019, Applicant was diagnosed as having major depressive disorder. He has no current suicidal ideation. Although no formal personality testing was done, there may be personality traits including strong emotions that contribute to Applicant's past suicidal gestures and mood changes. Dr. AG indicates that Applicant's current condition does not meet the DSM criteria for major depressive disorder. However, considering his history of low mood anhedonia and low self-esteem, he likely has a mood disorder. Dr. AG concludes there was no evidence of paraphiliac disorders, including but not limited to pedophilia. There is no evidence of a sexual disorder. Her diagnosis is Unspecified Mood Disorder. (Id.)

Guideline M - Use of Information Technology

Under Guideline M: Use of Information Technology, there are five allegations. Before the hearing, the Government withdrew a sixth allegation, SOR ¶ 3.f. The remaining allegations include:

SOR ¶ 3.a cross-alleges, and Applicant admits the allegation in SOR ¶ 1.k, which alleges he viewed and downloaded pornography on his work computer between 2004 to 2009. (GE 9 at 10-11)

SOR ¶ 3.b alleges, and Applicant admits, that in 1997 Applicant provided his spouse with his government account password and allowed her to log into his government account/laptop on multiple occasions. (16 Mar Tr. at 68-69; GE 5 at 35, 41-42; GE 9 at 7; GE 10 at 6)

SOR ¶ 3.c alleges, and Applicant admits, in approximately 2003, he intentionally misused his access to his supervisor's computer without her permission to view her paystub and salary while working at Employer C. (16 Mar Tr. at 70; GE 5 at 41-42; GE 7 at 2, 9; GE 9 at 7, 13, 37-38; GE 10 at 6)

SOR ¶ 3.d alleges, and Applicant admits, that he downloaded unauthorized software and MP3 files to his company computer in approximately 2009 while working at Employer C. (16 Mar Tr. at 70-71; GE 5 at 35, 41)

SOR ¶ 3.e alleges, and Applicant admits, that in approximately 2017, Applicant intentionally used his administrator rights to view the salaries of other engineers and test drivers while working for Employer D as a contractor for a government agency. (16 Mar Tr. at 71-72; GE 10 at 6)

Applicant disclosed the information in SOR ¶¶ 3.b through 3.e in polygraph interviews. He did not disclose the information to his security officers or his supervisors shortly after these incidents of misuse of information technology.

Guideline E - Personal Conduct

Under Personal Conduct, the SOR cross-alleges all of the allegations under Guideline D, Sexual Behavior – SOR ¶¶ 1.a – 1.l (SOR ¶ 4.a); all of the allegations under Guideline I, Psychological Conditions - SOR ¶¶ 2.b – 2.h (SOR ¶ 4.b); and all of the allegations under Guideline M, Use of Information Technology - SOR ¶¶ 3.b – 3.f (SOR ¶ 4.c).

Whole-Person Factors

Several people testified on behalf of Applicant during the hearing, to include friends, past co-workers, current co-workers, and family.

Ms. SD worked with Applicant at Employer C in the late 1990s to the early 2000s. She was Applicant's manager. She also met Applicant's wife and children. She was provided with and read a copy of the SOR. She was familiar with the allegation in SOR ¶ 3.c, which alleges Applicant misused his access to his supervisor's computer to view her paystub and salary without her permission in 1993. Ms. SD was aware his supervisor was Ms. KP. She was not aware that Applicant had looked up his supervisor's salary until he provided her with a copy of the SOR. She said within their group, there were a lot of conversations about salary and trying to find out whether everyone was getting paid what they should be. This was normal. She describes Applicant as a great engineer. She had no issues with his judgment in terms of making decisions that were in the interest of making system improvements. She confirmed Applicant worked at Employer C from September 1999 to November 2014. He was let go as part of a reduction in force. (Tr. 93 – 97; Response to SOR, encl. 8)

Mr. EE has known Applicant since 2004. They worked together at Employer C. Applicant provided him a copy of the SOR. He finds Applicant to be 100% trustworthy. He was the go-to person during engineering trials. He was very reliable and thorough in investigating issues and supporting people who worked with him. He was very honest and sincere. They remain friends. Mr. EE also wrote a letter on Applicant's behalf, dated January 28, 2025. Under cross examination, he stated he was not aware of Applicant masturbating in the office until he was provided a copy of the SOR. (17 Mar Tr. 57-60, Response to SOR, encl 8)

Mr. VK has known Applicant since 1979 when they were six years old. They met in first grade. He has always found Applicant to be honest and trustworthy. He has known him for over 50 years. He read the SOR and is not aware of the particulars of each allegation, but can state based on his interaction with Applicant, he has always found him to be trustworthy. His thought process is logical, and he makes sound judgments. He has always been a good caring husband and father. He is a wonderful person who demonstrates good character and integrity in his daily life. (17 Mar Tr. at 62 – 65; Response to SOR, encl 8)

Ms. SS testified that she has known Applicant since the mid-1990s. They last saw each other in person a few years ago during Thanksgiving. Ms. SS said Applicant is a good friend and family member. She describes him as "reliable, dependable, sweet, caring and kind." She also provided a letter of support for Applicant dated October 11, 2025. She is Applicant's second cousin. (Tr. 67, 69; AE G)

Mr. MN has known Applicant since 1999. They worked together at Employer C. He worked there from 1999 to 2013. He worked with Applicant on a daily basis. He has read the SOR. He still trusts Applicant and believes he is reliable. (17 Mar Tr. at 73-79)

Mr. PD first met Applicant in college around junior year in 1996. Applicant has always been reliable. His opinion has not changed after reading the SOR. Applicant called in 2023 because he was worried about his children. He confided in him to confirm that he was making the right decision, and he was not over-reacting. (17 Mar Tr. at 79-87, Response to SOR, encl 8)

Mr. SN works with Applicant in his current place of employment. He testified that Applicant puts a lot of thought into making a decision. He takes a step back and makes sure he fully understands the picture before actually acting. Applicant is his unofficial mentor. He is always available to help when he has a technical issue. (17 Mar Tr. at 88-97)

Dr. DH testified that he is currently a professor of neurological surgery and director of a neurological surgery residency program. He was Applicant's roommate in college. He said that Applicant makes good life decisions. In a letter dated February 11, 1995, Dr. DH testified that he has known Applicant since September 1995 when they were roommates in college. Applicant is a very close friend. He describes him as the most open and honest person he has ever met who is dependable and of strong moral character. Over the last 30 years, he has observed him as a dutiful husband and father to three amazing young men. He has not observed any character or behavior concerns during their 30-year friendship. He takes great pride in his work and loves his country. He is confident Applicant can be trusted and gives him his fullest recommendation. (17 Mar Tr. 102 – 105; Response to SOR, encl 8)

In addition to testifying several people wrote letters on Applicant's behalf attesting to his good character and work ethic.

Ms. TD, Applicant's direct manager since early 2020, writes that he is one of the most reliable and sensible individuals that she has known. She states that Applicant has "a sense of ethics and professionalism in all his work contributions, he pays attention to details and is always a valuable team player. . ." She never hesitates to give him difficult tasks because she knows he will complete with the utmost attention. She is confident in his judgment and integrity while in the workplace. (Answer to SOR, Encl 8)

Mr. OD is a District Manager at Employer A, Applicant's current employer. He initially met Applicant in 2020 during the interview process and again when he started to

work there full-time. They worked as peers for a few years, and later Mr. OD became the ranking manager in their office. He was not Applicant's direct manager but in the chain. He notes in his letter that Applicant is one of the most reliable and sensible individuals I have known. He said Applicant has always demonstrated impeccable work ethic, teamwork, loyalty to our country, and devotion to his family and friends. He said Applicant was always reliable, punctual, and went above and beyond for all assigned tasks. He has known Applicant for five years and can attest that he has demonstrated nothing but good judgment and integrity for everything he has done while working for Employer A. Mr. OD highly recommends Applicant for access to classified information. (Response to SOR, encl. 8)

Mr. GA has worked with Applicant over the past five years. He has shown professionalism, integrity and reliability in all of their interactions. He consistently handles information with care and adheres to security protocols. He is trustworthy, detail-oriented, and respected by colleagues. (Answer to SOR, Encl 8)

Mr. BA has known Applicant since September 2006. He was Applicant's manager. He consistently displayed an outstanding work ethic and exceptional teamwork. He continues to maintain personal (family) and professional contact. Having personally known Applicant for over a period of 18 years, he can vouch for him as a person of reliability and integrity. He is aware that he is facing a potential security clearance denial. He is aware of some of the concerns in the SOR, and believes these incidents are not a present concern today. He believes Applicant has resolved any potential concerns and recommended him for access to classified information. He was an invaluable asset on his team, and it would be a net loss to the government if he were denied access to classified information. (Answer to SOR, Encl 8)

Several other personal friends and co-workers wrote letters on behalf of Applicant attesting to similar things about his character. His three sons and his father also wrote favorable letters on his behalf. (Answer to SOR, Encl 8; AE G)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy" to have access to such information. *Id*. at 527. The President has authorized the Secretary of Defense or his designee to grant 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules

of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. Thus, this decision should not be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Guideline D - Sexual Behavior

AG ¶ 12 provides the security concern arising from sexual behavior:

> Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 provides conditions that could raise a sexual behavior security concern and may be disqualifying in this case:

> (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
>
> (b) pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop;
>
> (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and
>
> (d) sexual behavior of a public nature or that reflects lack of discretion or judgment.

AG ¶¶ 13(a), 13(b), 13(c), and 13(d) are established. AG ¶ 13(a) applies regarding Applicant's history of public masturbation from 1986 to 2016. He began this behavior at the age of 12 and it continued into adulthood. AG ¶ 13(b) applies with respect to Applicant's masturbation in public places to include his worksite and his viewing and downloading of pornography on his work computers while he was at work. These behaviors showed a pattern of compulsive and high-risk sexual behaviors that he was unable to stop. AG ¶ 13(c) applies because Applicant's behavior made him vulnerable to coercion, exploitation, and duress and AG ¶ 13(d) applies because the sexual behavior was of a public nature that lacked discretion or judgment.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

> Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See* Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in

Egan, *supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2, [App. A] ¶ 2(b).

AG ¶ 14 lists conditions that could mitigate sexual behavior security concerns:

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

(b) the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

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

(d) the sexual behavior is strictly private, consensual, and discreet; and

(e) the individual has successfully completed an appropriate program of treatment, or is currently enrolled in one, has demonstrated ongoing and consistent compliance with the treatment plan, and/or has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.

AG ¶ 14(a) does not apply. While Applicant began to masturbate outside in the woods at a young age, he continued to masturbate in inappropriate places in public well into adulthood. The last time he masturbated in a public location was in the fall of 2016 when he masturbated in a parking lot of Employer D.

AG ¶ 14(b) applies because Applicant's last incident of public masturbation occurred in 2016, more than ten years ago. His last incident of looking at pornography on his work computer was in 2014, about 12 years ago. While a significant amount of time has passed, Applicant attempted to stop these behaviors after his security clearance was denied in 2009. After several years, he continued to view and download pornography at work, and he had at least one instance of masturbating in the parking garage where he worked in 2016. While he took precautions to avoid being observed, such conduct, if discovered, would have been illegal and raised questions about his judgment, trustworthiness, and reliability. It raises the possibility that these behaviors could recur in the future.

Applicant's private viewing of adult pornography on his personal laptop computer or other privately owned media is protected conduct under the First Amendment and the liberty interest of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. *See generally Lawrence v. Texas*, 539 U.S. 558 (2003) (discussing right to engage in private, consensual sexual behavior); *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803 (2000) (discussing adult pornography and First Amendment).

During a third polygraph examination in March 2009, Applicant admitted to fantasizing and masturbating after looking at fully clothed photographs of his sister-in-law, who was between the ages of 15 and 17 at the time. He claims that this occurred between approximately 2006 to 2007 on three occasions and it was purely fantasy. He never touched his sister-in-law inappropriately, and he is not interested in underage children. While his thoughts were wholly inappropriate, he never acted on them. He told mental health professionals that he fantasized about his sister-in-law because she was his wife's sister, not because she was underage. Either way this conduct is inappropriate. He no longer fantasizes about his sister-in-law. His security clearance was denied in 2009, primarily due to this conduct. He continued to fantasize about his sister-in-law until 2018.

AG ¶ 14(c) applies because Applicant fully disclosed his sexual misconduct to his wife, family, and security investigators. He was very open during the hearing and during his security clearance background investigations. He is no longer vulnerable to coercion, exploitation, or duress, based on these disclosures.

AG ¶ 14(d) does not apply to the allegations in SOR ¶¶ 1.a-1.i and 1.k-1.l. His masturbation in the woods or in his workplace and his viewing of pornography on company or government computers cannot be considered private or discreet. His past masturbation behavior occurred at places where he could be discovered by members of the public, or co-workers in the workplace. However, this mitigating condition applies with regard to the allegation in SOR ¶ 1.k related to masturbating while viewing images of his underage sister-in-law. While wholly inappropriate, the conduct involved private thoughts and fantasies which he never acted upon except to masturbate, and no one was aware of them until his polygraph examination in March 2009.

AG ¶ 14(e) does not apply because Applicant was not diagnosed with a sexual disorder. His counseling and therapy will be discussed under Guideline I.

Based on Applicant's extensive history of public masturbation as well his history of viewing and downloading pornography on his work computer while in the workplace, and overall poor judgment and impulsive behavior, Sexual Behavior security concerns are not mitigated.

Guideline I - Psychological Conditions

AG ¶ 27 provides the security concern arising from psychological conditions stating:

> Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including

prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

AG ¶ 28 provides conditions that could raise psychological conditions security concern and may be disqualifying in this case:

(a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; and

(c) voluntary or involuntary inpatient hospitalization.

AG ¶¶ 28(a), 28(b), and 28(c) are established. AG ¶ 28(a) applies because of Applicant's history of MDD, which resulted in suicide attempts and suicide ideations starting at age 11. His history of public masturbation, viewing pornography at work, and his sexual fantasies about his under-age sister-in-law are considered bizarre behaviors. These sexually related behaviors are covered under Guideline D, and do not trigger AG ¶ 28(a); however, his suicide-related conduct does establish AG ¶ 28(a). AG ¶ 28(b) applies because Dr. GW, a DOD-approved psychologist, concluded he has a condition that may impair his judgment, stability, reliability, or trustworthiness. AG ¶ 28(c) applies because Applicant was briefly hospitalized when he was in college out of concern that he was suicidal.

AG ¶ 29 lists conditions that could mitigate psychological conditions security concerns:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

(e) there is no indication of a current problem.

AG ¶ 29(a) and AG ¶ 29(b) do not apply because Applicant is not currently seeing a mental health professional and does not have a treatment plan. While he has attended treatment in the past, most of the treatment focused on his marital problems. It is noted that his history of public masturbation and use of pornography in the workplace were discussed during his counseling, but they were not the focus of the treatment even though his conduct contributed to their marital issues. Even during the hearing, Applicant's focus was primarily on his marital problems and not about what he was doing to resolve his public masturbation and workplace pornography issues.

AG ¶ 29(c) does not apply. Dr. GW is a duly qualified health professional who was employed by the U.S. Government to assess Applicant. While her diagnosis was Major Depressive Disorder, Recurrent, in remission, she did not conclude that his behavior or condition has a low probability of recurrence or exacerbation. Dr. GW concludes in her March 17, 2024, report:

> Currently, Applicant presents a condition at this time, that could pose a significant risk to his judgment, reliability, trustworthiness, and ability to protect classified information. This subject has demonstrated an inconsistent track record of seeking help when needed. He detailed significant marital and familial stressors that are ongoing. When [Applicant] was asked about his last incident of public masturbation in the workplace, he indicated that he was in a parking lot and could not have been detected. He did not appear to recognize the legal and occupational concerns this pattern raises about his judgment regardless of whether it is detected. Given his history, this behavior is likely to recur. (GE 10 at 11)

I do not give much weight to Dr. GW's provisional diagnosis of borderline personality disorder. None of Applicant's other treating mental health professionals arrived at this diagnosis and Dr. GW acknowledges that more time would be needed to observe Applicant to conclude this diagnosis. In other words, her diagnosis of borderline personality disorder was premature.

AG ¶ 29(d) partially applies in that Applicant's major depressive disorder is in remission. However, he has struggled with depression since he was a young child. I cannot conclude that his struggles with depression are temporary because his depression has the potential to re-occur when dealing with issues. In 2023, he expressed suicidal ideation to Dr. KT because of the breakup of his marriage. It is noted that he did not have a plan in place on that occasion.

As mentioned above, AG ¶ 29(e) applies because there is no indication of a current problem. His last mental health issues occurred over two years ago, when he sought Dr. KT's assistance related to the breakup of his marriage. She diagnosed him with adjustment disorder and noted that after seven months of therapy, the issue was resolved.

While Applicant has a history of seeking mental health assistance for his mental health issues, a concern remains about the possibility that his past behaviors and MMD could recur. He has dealt with this issue since childhood. In the past, he attempted to commit suicide on several occasions and has had suicidal ideations as recent as 2023. This creates doubt that Applicant's mental health issues will remain stable in the future. In cases where there is doubt, the case should be ruled in favor of national security. The issues raised under the Psychological Conditions guideline are not mitigated.

Guideline M - Use of Information Technology

AG ¶ 39 provides the security concern arising from use of information technology.

> Failure to comply with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology includes any computer-based, mobile, or wireless device used to create, store, access, process, manipulate, protect, or move information. This includes any component, whether integrated into a larger system or not, such as hardware, software, or firmware, used to enable or facilitate these operations.

AG ¶ 40 provides conditions that could raise a use of information technology security concern and may be disqualifying in this case:

> (e) unauthorized use of any information technology system; and
>
> (f) introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system when prohibited by rules, procedures, guidelines, or regulations or when otherwise not authorized.

AG ¶¶ 40(e), and 40(f) are established. Between 1997 and 2017, Applicant misused his workplace information technology system, including giving his wife the password to his work computer for her personal use in approximately 1997 when he worked at Employer B; intentionally accessing his supervisor's computer to view her paystub and salary without her permission in 2003 while working for Employer C; from approximately 2004 to approximately 2009, he used his company computer to view and download pornography on multiple occasions while working for Employer C; in approximately 2009, he download unauthorized software and MP3 files while working for

Employer C, and in 2017 he misused his administrator rights while working for Employer D, a contractor for a government agency, to view the salaries of other employees. He has a history of misusing information technology systems within the workplace.

AG ¶ 41 lists conditions that could mitigate personal conduct security concerns:

> (a) so much time has elapsed since the 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;
>
> (b) the misuse was minor and done solely in the interest of organizational efficiency and effectiveness;
>
> (c) the conduct was unintentional or inadvertent and was followed by a prompt, good faith effort to correct the situation and by notification to appropriate personnel; and
>
> (d) the misuse was due to improper or inadequate training or unclear instructions.

Only AG ¶ 41(a) applies. While Applicant's behavior is concerning, most of his IT misuse occurred from approximately 1997 to 2009. The last incident occurred in 2017. While Applicant's past misuse of his workplace computers and information technology systems was serious and highly inappropriate, the issues under Guideline M are mitigated because the last incident occurred more than nine years ago, has not recurred, and does not cast doubt on his current reliability, trustworthiness, and good judgment.

Guideline E - Personal Conduct

The SOR cross-alleged all of the SOR allegations under the Personal Conduct Concern. All of the allegations were appropriately addressed under the Sexual Behavior, Psychological Conditions, and Use of Information Technology Concerns. If I were to address the security concerns under Personal Conduct, I would consider the following:

AG ¶ 15 provides the overall security concern arising from personal conduct:

> 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 following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 provides conditions that could raise a personal conduct security concern and may be disqualifying in this case:

> (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, 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. This includes, but is not limited to, consideration of:
>
> > (2) any disruptive, violent, or other inappropriate behavior;
> >
> > (3) a pattern of dishonesty or rule violations; 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. Specifically (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

AG ¶ 16(d)(2) and AG ¶ 16(d)(3) would apply because of Applicant's history of public masturbation, his fantasizing about his underage sister-in-law, and his use of his work computer to download and view pornography at work. All of this conduct would be considered inappropriate. His use of his work computer to download and view pornography as well as providing his wife his password to his work computer on multiple occasions in 1997; accessing his supervisor's computer in 2003 to view her paystub and salary; downloading unauthorized software and MP3 files to his company computer in 2009 and misusing his administrator rights in 2017 to view the salaries of other employees shows a pattern of dishonesty and rule violations. However, AG ¶ 16(d) excludes "credible adverse information that is not explicitly covered under any other guideline," and this credible information is explicitly covered under Guidelines D, I, and M. Therefore, neither AG ¶ 16(d)(2) nor AG ¶ 16(d)(3) apply.

AG ¶ 16(e) applies because the above conduct made Applicant vulnerable to exploitation, manipulation, or duress. His past activities, if known, could affect his personal, professional, or community standing.

AG ¶ 17 lists conditions that could mitigate personal conduct security concerns:

> (c) the offense is 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; and

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

Applicant has not committed any of the above conduct since at least 2016. More than ten years have passed since his inappropriate conduct occurred. AG ¶ 17(c) applies. Applicant's full disclosure of his past conduct to his wife, family, friends and the background investigators make him no longer vulnerable to exploitation, manipulation or duress, and AG ¶ 17(e) applies.

The security concerns addressed under Sexual Behavior, Use of Information Technology and Psychological are mitigated as cross alleged under the Personal Conduct concern.

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 his conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration" of the guidelines and the whole-person concept. My comments under Guidelines D, I, M, and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

I considered the following whole-person information: Applicant's favorable service for over six years with his current employer, Employer A; his past employment history; character-reference evidence attesting to his personal attributes and his work performance; letters and testimony of his friends and co-workers indicated that he is held in high regard and is a hard worker. Applicant is devoted to his family. The letters from his three sons and his father attest that he is a good son and father.

The reasons for denying Applicant's security clearance are more persuasive than the reasons for granting his security clearance. While Applicant's major depressive disorder is in remission, a concern remains because his long history of depression and public masturbation creates a likelihood of recurrence. He has struggled with depression

since he was 11. He has engaged in acts of public masturbation since he was 12 and continued to do so as an adult. After his security clearance was denied in 2009, he continued to masturbate in public settings. The last occurrence was in the fall 2016. After his clearance was denied in 2009, Applicant stopped using pornography for awhile and then started again. The last time he viewed pornography on his office computer was in 2014. He continued to fantasize about his sister-in-law after she came of age. The last time he masturbated while fantasizing about her was 2018. I agree with Dr. GW's assessment that given his history, Applicant's behavior and poor judgment is likely to recur.

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

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence, to the facts and circumstances in the context of the whole person. Use of information technology security concerns and concerns under personal conduct are mitigated. The security concerns under sexual behavior and psychological conditions 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
Subparagraphs 1.a through 1.l:	Against Applicant
Paragraph 2, Guideline I:	AGAINST APPLICANT
Subparagraphs 2.a through 2.d:	Against Applicant
Subparagraph 2.e:	For Applicant
Subparagraphs 2.f through 2.g:	Against Applicant
Paragraph 3, Guideline M:	FOR APPLICANT
Subparagraphs 3.a through 3.e:	For Applicant
Subparagraph 3.f:	Withdrawn

Paragraph 4, Guideline E: FOR APPLICANT

Subparagraphs 4.a through 4.c: For Applicant

Conclusion

Considering all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.
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Erin C. Hogan
Administrative Judge