



DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 25-01485

Applicant for Security Clearance

Appearances

For Government:
Nicole Smith, Esq., Department Counsel

For Applicant:
Pro se

08/11/2026

Decision

NAGEL, Jeff A., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline's J (Criminal Conduct) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions on May 22, 2023 (Questionnaire). On February 27, 2026, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline's J (Criminal Conduct) and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within DoD after June 8, 2017.

On March 31, 2026, Applicant responded to the SOR in writing (Answer) and requested that his case be decided on the written record in lieu of a hearing. In his Answer, he admitted to the allegations under both guidelines with explanations. On May 27, 2026, Department Counsel submitted the Government's written case in a File of Relevant Material (FORM). A complete copy of the FORM, consisting of Government's Exhibits (GE) 1 to 5 and the Government's arguments in support of the SOR, was received by Applicant on June 3, 2026. He was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Within the allotted time he submitted a five-page FORM Response. The case was assigned to me on August 4, 2026, and GE 1 to 5 were admitted without objection, as was the Response.

Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. He is married and has two minor children. He has both an undergraduate and master's degree and received a Department of Defense security clearance in 2009. (GE 3, Response)

The SOR alleges that in April of 2019; while working as a contractor for a Government Agency, Applicant recognized a phone number of a criminal organization that was in the process of being wire tapped as part of a drug investigation. Applicant notified one of the targets of the investigation whom it was later learned was a friend of his for over 10 years. (GE 5)

A subsequent investigation revealed that the Applicant, upon learning that his friend was under investigation, went to him and told him that he saw his name and phone numbers come across his desk and that the phones he was using were "hot" and being monitored by law enforcement. As a result of Applicant's disclosure of the wiretaps to his friend the target, the investigation ceased, resulting in no arrests or seizure of drugs. (GE 5)

Applicant was eventually charged with Giving Notice of Authorized Interception of Wire and Electronic Communications to Obstruct, Impede, and Prevent such Interceptions, a felony. He pleaded guilty and was sentenced to twelve months in a federal prison and one year of supervised probation after release from prison. In his Answer to the SOR, Applicant admitted to his conduct and that his sentence included:

- 3.5 months in federal custody
- 3 months in a halfway house
- 5.5 months of home supervision
- 12 months of probation

Applicant successfully completed his sentence, is no longer on parole, and admitted to both Guidelines and accepted responsibility for his actions. (GE 2, 4, 5, Response)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect, or safeguard classified information.

Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under

this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline J, Criminal Conduct

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

Criminal activity creates doubt about an Applicant’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(a) 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.

Applicant was charged with, and pleaded guilty to, Giving Notice of Authorized Interception of Wire and Electronic Communications to Obstruct, Impede, and Prevent such Interceptions, a felony. The above disqualifying condition is applicable.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant was found guilty of a felony offense. His action of informing his friend of the wiretap materially interfered with a federal investigation and impeded the United States from administering justice in a criminal case, which makes this Applicant conduct even more egregious and aggravating. Applicant may have taken responsibility for actions and “paid” for his crimes but nevertheless he made a conscious decision to tip off

his friend and not live up to his duties and obligations as part of the investigation. What troubles me is that he has shown he will commit misconduct to protect someone he has a relationship with. He has clearly shown that he is willing to subvert the interests of the United States for his own personal desires.

I cannot find that criminal conduct is unlikely to recur. His criminal conduct continues to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions are applicable. Criminal conduct security concerns are not mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information, and

(d) disruptive, violent, or other inappropriate behavior

Applicant's decision to tip off his friend and not live up to his duties and obligations as part of the investigation, which caused the criminal investigation to fall apart, not only calls into question his judgment but also shows untrustworthiness and unwillingness to comply with rules and regulations. The above disqualifying condition(s) are applicable.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following are potentially applicable:

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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

I am unable to find that Applicant's problematic conduct is unlikely to recur. His conduct continues to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions, individually or collectively, are sufficiently applicable to overcome concerns about Applicant's poor judgment and problematic conduct.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the above whole-person factors and the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have also considered Applicant's contrition and the numerous letters of support he submitted in his Answer. Overall, however, Applicant's criminal and personal conduct and the circumstances surrounding them leave me with questions and doubts as to his suitability for a national security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

JEFF A. NAGEL
Administrative Judge