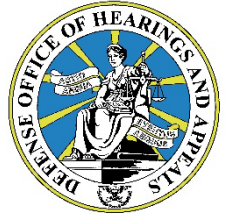




**DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS**



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

ISCR Case No. 26-00134

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

08/20/2026

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 27, 2024. On April 8, 2026, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines D, J, and E. Applicant answered the SOR on April 23, 2026, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 28, 2026. A complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on June 9, 2026, and responded. The case was assigned to me on August 3, 2026.

The Government's FORM consists of the SOR, Applicant's answer to the SOR (Government Exhibit (GE) 1), and the documents in support of the allegations in the SOR (GE 3-5). GE 2 through 8 are admitted into evidence, without objection. Applicant's response to the Government's FORM is a narrative that reiterates the facts he asks to be considered towards mitigation. He also corrects the typographical error made by the Government in its FORM relaying Applicant's dates of active-duty military service. Applicant's response to the FORM is admitted, without objection.

Findings of Fact

The SOR alleges under Guideline J and cross- alleges under Guidelines D and E, that Applicant was arrested in March 2024 and charged with felony online solicitation of a minor. (SOR ¶¶ 1.a, 2.a, and 3.a) He admitted the allegation under Guideline J and stated that this was his "first and only" arrest and the charge was reduced to attempted online solicitation of a minor. (SOR ¶ 1.a; GE 1) He admitted the allegation under Guideline E and stated he had "a momentary lapse in judgment" and that the arrest was questionable since he canceled the planned interaction before it took place. (SOR ¶ 3.a; GE 1) He denied the allegation under Guideline D and stated that he has held a clearance since 2001 and "would rather die or face life imprisonment before releasing information that would harm the United States." (SOR ¶ 2.a; GE 1)

Applicant is 42 years old, married in 2006, and has three minor children. He graduated high school in 2001 and served honorably in a branch of the United States Armed Forces between 2001 to 2012. He earned an associate degree in 2015 and a bachelor's degree in 2020. He has been employed by his government contractor sponsor since July 2021.

In March 2024, Applicant was staying at a hotel while on a business trip. He placed a written note in the elevator soliciting sexual interactions. The note was discovered by a hotel staff member (hereafter referred to as Witness). Witness told police that the note included "vulgar and explicit" statements and a phone number. (GE 5 at 3) Witness contacted Applicant via text message. Witness initially told Applicant he was 18 years old. After several exchanges, which included Applicant sending Witness two lewd photographs, Applicant sent Witness his room number. Witness then told Applicant he was 17 years old and asked if "that was ok." (GE 3 at 2) Witness then stated, "he was actually only 16 years old and wanted to make sure [Applicant] was still okay with that." (GE 5 at 3) Applicant's response was "that it was up to [Witness] ultimately, and that as long as [Witness] was comfortable, he was fine with it." (GE 5 at 3)

Applicant admitted, during his February 2025 interview with an authorized investigator following his SCA submission, that he left the note in the elevator soliciting sexual interaction. He also admitted to engaging in the text conversation with Witness, sending him lewd photographs, agreeing to meet with him, and providing him with his room number. However, about thirty minutes after he agreed to the meeting, he texted Witness that he was no longer interested. He canceled the meeting because "it did not feel right" and the "the texts were getting too suspicious." (GE 3 at 2)

Hotel staff contacted the police. Police officers arrived at the hotel, interviewed Witness, and reviewed the text messages. The police officer in charge at the scene determined that there was insufficient evidence of a criminal offense but offered to assist hotel staff and escort Applicant off the property. A different hotel staffer went up to the room. Applicant answered the door. He was told that there was an issue with his credit card and asked if he would come downstairs. He exited the room and discovered police waiting outside. He was admonished by police and advised that he would not be arrested, but that he had to leave the hotel. He was allowed time to gather his belongings and was escorted off the property. (GE 5)

According to police reports, Applicant admitted to leaving the note but did not believe he had done anything wrong since he never went through with the meeting. Police made a judgment call on the scene that because there was no “overt act,” there was insufficient probable cause for an arrest. They escorted Applicant to his vehicle and ran the license plate, which returned Applicant’s wife’s information. (GE 5)

While back at the station, one of the on-scene police officers contacted Applicant’s wife, who confirmed that he was out of town on a business trip. After the officer informed Applicant’s wife of what had occurred in the hotel, she told the officer that “this was not the first time she had heard that [Applicant] was doing inappropriate things on the internet. . . . she had a friend who told her at some point in time [Applicant] had posted a picture of his penis on a dating website, however, . . . she hadn’t actually caught him doing anything herself.” She also said that he would be back in town on business in the coming weeks and provided the dates of his anticipated trip as well as the name and location of the hotel where he would be staying. (GE 5)

After supervisory review of the report by the duty sergeant, it was determined that there was sufficient evidence for an arrest. Accordingly, a warrant was issued for Applicant’s arrest. Approximately 10 days later, just as his wife said he would be, Applicant was back in the area on a subsequent business trip. Police officers located him parked outside of a fast-food restaurant and he was arrested.

In July 2024, Applicant was indicted on one count of online solicitation of a minor, specifically “intentionally communicate by text message in a sexually explicit manner with . . . a person [Applicant] believed to be a minor.” (GE 7) In his interrogatory response, Applicant stated that his attorney had the charge reduced to attempted solicitation of a minor and he would likely take a plea deal with a 10-year probation period. (GE 4 at 5) As of the date of Government’s FORM, the case was still ongoing.

In his Response, Applicant stated that he is not yet convicted, but is scheduled for a sentencing hearing on July 29, 2026, and expects to be sentenced to probation. He stated that if convicted, he will accept his punishment and abide by his probation requirements. He admitted fault, took “ownership of [his] mistakes,” and is willing to take a polygraph because he has “nothing to hide.” (Response) The record in the present matter closed prior to the resolution of Applicant’s criminal matter; therefore, it is devoid of evidence reflecting the eventual resolution of the criminal matter.

Policies

This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of 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 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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

Analysis

Guideline J: Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30: “Criminal activity creates doubt about an Appellant’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.”

The following disqualifying conditions are potentially applicable under this guideline:

AG ¶ 31(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and

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

Applicant’s admissions and the record evidence establish disqualification under AG ¶ 31(b). Applicant’s sentencing hearing in criminal court was scheduled for July 29, 2026. As of the date of his response to the FORM, he anticipated he would enter a guilty plea pursuant to a plea deal, be convicted, and placed on probation for approximately 10 years. However, because his response was due prior to the resolution of his criminal matter, the record is devoid of evidence to support disqualification under AG ¶ 31(c).

The following mitigating conditions are potentially applicable:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment; and

AG ¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or

higher education, good employment record, or constructive community involvement.

Mitigation is not established. AG ¶ 32(a) does not apply because the behavior is recent and as of the date of Applicant's response, the criminal matter was still pending in court. There is no evidence to support application of AG ¶ 32(d), because although Applicant anticipates he will be sentenced to probation – if and when that happens – it will be his first step towards rehabilitation.

Guideline D: Sexual Behavior

The concern under this guideline is set out in AG ¶ 12:

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

The following disqualifying conditions are potentially applicable under this guideline:

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

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

Applicant denies this allegation. The evidence in the FORM, which includes his statements and admissions to police, his statements and admissions during his February 2025 interview, Witness's statement to police, and Applicant's wife's statement to the police, establish disqualification under AG ¶¶ 13(a) and 13(c).

The following mitigating conditions are potentially applicable:

AG ¶ 14(b): the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

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

AG ¶ 14(e): the individual has successfully completed an appropriate program of treatment, or is currently enrolled in one, has demonstrated ongoing and consistent compliance with the treatment plan, and/or has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.

Mitigation is not established. AG ¶ 14(b) does not apply because the behavior is recent and not so infrequent. Applicant asserts that the behavior was unusual and a momentary lapse in judgment. His wife's accounts to the police, however, contradict his self-serving assertions and support a finding that there is a history or pattern of disqualifying sexual behavior. In light of this evidence, Applicant has failed to meet his burden of mitigation and establish with sufficient certainty that the behavior is not so infrequent or unusual. AG ¶ 14(c) does not apply because there is no evidence to support that the behavior is common knowledge such that it can no longer serve as a basis for coercion, exploitation, or duress. Lastly, there is no evidence to support rehabilitation and application of AG ¶ 14(e).

Guideline E: Personal Conduct

The security concern under this guideline is set out in AG ¶ 15: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . ."

The following disqualifying condition is potentially applicable under this guideline:

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant's admissions and the evidence in the FORM establish disqualification under AG ¶ 16(e). Even if the criminal nature of Applicant's actions in March 2024 were set aside, the record evidence supports finding that Applicant engages in questionable conduct that he actively conceals from his wife; and which, if known, could detrimentally affect his personal, professional, or community standing. As such, he is vulnerable to exploitation, manipulation, or duress.

The following mitigating conditions are potentially applicable:

AG ¶ 17(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;

AG ¶ 17(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

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

Mitigation is not established. AG ¶ 17(c) does not apply because the questionable behavior is recent, not so minor, and not so infrequent. Although Applicant emphasizes that this was his first and only arrest, the evidence supports a finding that the questionable actions and choices that led to his arrest are not so infrequent; they simply had not been met with police intervention prior to March 2024. AG ¶ 17(d) does not apply because the record lacks evidence of positive steps taken to ensure the imprudent behavior will not recur. AG ¶ 17(e) does not apply because even if Applicant's act did not meet the elements of a crime and he was never arrested, they still reflect incredibly poor judgment and expose him to exploitation, manipulation, and duress. There is no evidence in the record to establish that the risk has been neutralized or eliminated.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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

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

Formal Findings

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

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline D:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge