



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
))
[Name Redacted])) ISCR Case No. 23-01593
))
Applicant for Security Clearance)

Appearances

For Government: John G. Hannink, Esq., Department Counsel
For Applicant: Bradley P. Moss, Esq.

03/14/2025

Decision

HOGAN, Erin C., Administrative Judge:

Applicant mitigated the security concerns under Guideline D (sexual behavior), Guideline E (personal conduct), and Guideline J (criminal conduct). Eligibility for access to classified information is granted.

Statement of the Case

On October 19, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guidelines D, E, and J. The DCSA CAS 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.

Applicant answered the SOR on August 18, 2023, and requested a decision before an administrative judge. The case was assigned to me on August 13, 2024. The

hearing was convened as scheduled on December 3, 2024. The Government offered six exhibits, which were marked as Government Exhibits (GE 1-6) and admitted without objection. The Government Exhibit list was marked as Hearing Exhibit (HE) 1. The Government's discovery letter to the Applicant, dated July 5, 2024, was marked as HE 2. The Government also provided two documents for Administrative Notice. The Administrative Notice list was marked as HE 3. Applicant testified and offered four exhibits which were admitted as Applicant Exhibits (AE) A - D. The Applicant's Witness and Exhibit List was marked as HE 4. The transcript (Tr.) was received on December 12, 2024, and the record closed on that date.

Procedural Issue

On July 5, 2024, Department Counsel moved to amend to the SOR. Each allegation in the original SOR was replaced, and an additional SOR allegation, SOR ¶ 3.c was added. Ordinarily, if one were to rewrite all the allegations in the SOR, the original SOR would be withdrawn and a new SOR would be issued. The amended SOR replaces the original SOR. Each allegation will be discussed specifically in the Findings of Fact section. On July 25, 2024, Applicant responded to the amendment to the SOR and requested a hearing before an administrative judge.

In the interests of Applicant and his family's privacy, certain names and facts have been redacted or mentioned in general terms. The facts can be found in the case file.

Motion in Limine

On December 2, 2024, the Government requested a Motion in Limine to Limit Consideration of AE A (Psychological Evaluation Report). Specifically, they object to a portion of a single paragraph of AE A on page eight, which reads:

There are plausible alternative explanations for the concerning sexual behavior outlined in his SOR. [Applicant] was first interviewed at age 17 and confessed to viewing pornography with underage participants at that time. Subsequent polygraph examinations added to that information and a file of "fact" about his pornography use was the result. However, the compilation of 'data' was probably gathered under duress (at best) and coercion (at worst) casting doubt on the veracity of the data. Based on his description of being tearful and feeling an urge to escape during the past polygraph examinations, [Applicant] was likely in a stressful state sufficient to limit the accuracy of any information he provided.

During the hearing, both the Government and Applicant's Counsel's arguments were heard and considered. I denied the motion, but advised the question of how much weight the particular paragraph will be given will be considered upon review of the entire record. (Tr. 8 – 10) The Government's Motion in Limine is marked as HE 5. Applicant's Counsel's Response to the Motion in Limine is marked as HE 6.

Findings of Fact

In his response to the SOR, Applicant admits in part, and denies in part each allegation.

Applicant is a 31-year-old former employee of a defense contractor. He worked for his previous employer since August 2019. Prior to that, he worked for another defense contractor from 2015 to 2019 in a cleared position. He was first granted a security clearance in 2010. His highest level of education is a bachelor's degree. He has no military service. He is engaged to be married and has no children. (Tr. at 66-68; GE 1)

The amended SOR allegations and Applicant's answers are as follows:

Guideline D, Sexual Behavior:

SOR ¶ 1.a: Applicant allegedly viewed pornographic images and videos of individuals under the age 18 on various occasions between 2007 to at least 2017. Some of the individuals were allegedly 14 or 15 years old. He masturbated to an image of an underage female who was stripping naked. (GE 2 at 3; GE 4 at 1)

Applicant's Answer to the Amended SOR: He admits to viewing adult pornography between 2007 and 2017, including both images and videos. He also admits to masturbating to pornography. He denied that any of the images or videos included individuals who were under the age of 18 years old. He also denied the accuracy of the term "on various occasions" as lacking in specificity and is concerned that was meant to describe conduct in excess of what he previously disclosed to the U.S. Government.

SOR ¶ 1.b: From about 2015 to at least 2017, on various occasions, Applicant allegedly downloaded pictures of females that were posted online by other individuals. On approximately 20 occasions he downloaded images of high-school-aged females that he estimated to be 14 or 15 years old; (GE 4 at 1)

Applicant's Answer to the Amended SOR: He admitted to downloading pictures of adult females between 2015 and 2017, which were posted online by other individuals. He denied the accuracy of "various occasions" as lacking in specificity and is concerned that it was meant to describe conduct in excess of what he previously described to the U.S. Government. He denied any of the images were of females who were under the age of 18 years old.

SOR ¶ 1.c: From about 2007 to at least 2017, on various occasions, he sought out bestiality pornography and masturbated while viewing it. (GE 3 at 4; GE 4 at 2)

Applicant's Answer to the Amended SOR: He admitted with clarification that the correct timeframe is from 2007 to 2015. He disclosed this information during his security clearance background investigation in 2017. He has not engaged in this conduct since

being granted a security clearance in 2017. He denied the accuracy of “various occasions” as lacking in specificity and is concerned that it was meant to describe conduct in excess of what he previously described to the U.S. Government.

Guideline J, Criminal Conduct

SOR ¶ 2.a: Cross-alleges SOR ¶ 1.a (GE 2 at 3; GE 4 at 1)

Applicant’s Answer to the Amended SOR: Applicant refers to his response to SOR ¶ 1.a. above. He admitted to downloading legal adult pornography. He denied searching for and downloading child pornography.

SOR ¶ 2.b: Applicant downloaded between 1.5 to 1.75 terabytes of pornography from websites to his hard drive as of November 2017. The majority of the material came from a website which Applicant used because he believed his downloads were not easily traceable by the Federal Bureau of Investigation (FBI) (GE 2 at 3; GE 4 at 1).

Applicant’s Answer to the Amended SOR: He admits that he engaged in this conduct in the past. He previously disclosed this information during his security clearance background investigation in 2017. He has not engaged in this behavior since being granted a security clearance in 2017.

Guideline E, Personal Conduct

SOR ¶ 3.a: All allegations in SOR ¶¶ 1. – 1.c, and SOR ¶¶ 2.a – 2.b were cross-alleged under personal conduct (GE 2 at 3; GE 4 at 1)

Applicant’s Answer to the Amended SOR: Applicant incorporates his responses to the subparagraphs 1.a – 1.c, and 2.a – 2.b, above.

SOR ¶ 3.b: Applicant intentionally falsified material facts during a July 20, 2022, interview with an authorized investigator, when he told the investigator that he has never illegally downloaded or viewed child pornography. (GE 4 at 6)

Applicant’s Answer to the Amended SOR: He denies the allegation. He has never downloaded or viewed actual child pornography. He stands by the accuracy of his statements to the investigator. He indicates that previous speculation on his part in prior investigations may have raised concerns about whether certain pornography “might” have consisted of underage females. He has no specific or concrete basis to believe that certain images were actually underage females. He rejects the premise that stating that as fact to the investigator would have been truthful or accurate. He does not have a substantiated basis to believe that the pornography he has reviewed in the past consisted of underage females or otherwise constituted child pornography.

SOR ¶ 3.c: Applicant allegedly falsified material facts during a September 1, 2017, polygraph examination when he denied that he had searched for bestiality

pornography. He admitted during a subsequent polygraph examination on November 21, 2017, that he intentionally sought out bestiality pornography (GE 3 at 4; GE 4 at 2)

Applicant's Answer to the Amended SOR: Applicant admits that he did not disclose during his September 1, 2017 polygraph examination that he had searched for bestiality pornography on the Internet. He denies that he concealed the fact that he viewed bestiality pornography. He disclosed that he had viewed it during the September 1, 2017, polygraph examination. He claims this issue was previously addressed during his 2017 security clearance investigation. He has not searched for or viewed bestiality pornography since being granted a security clearance in 2017.

Hearing Testimony

When Applicant was in high school, he attended a work study program with a DOD contractor from September 2010 to July 2011. He was 17. He attended high school classes in the morning and worked for the DOD contractor in the afternoon. He was required to submit a security clearance questionnaire. He was also required to undergo a polygraph examination. He was ultimately granted a security clearance. (Tr. 67-68)

The polygraph test occurred in May 2010. Applicant testified that the polygrapher's questioning style was aggressive. As a 17-year-old, he was terrified and became upset. He was crying and shaking as a result of the polygrapher's questioning. The polygrapher asked him about whether he ever looked at inappropriate sexual images. In the notes contained in the polygraph report, the polygrapher noted Applicant was visibly distressed and his body was shaking when questioned about whether he ever viewed inappropriate sexual images. The polygrapher notes state that Applicant allegedly said that he was concerned that he inadvertently viewed no more than 10 images of topless girls, ranging in age from 15 to 17. He saw these images from 2008 to a few days before the interview. He denied intentionally seeking out child pornography. He did not store the images on his computer. (GE 2 at 3)

Applicant testified that the polygrapher threw a lot of crazy questions at him. Before he took the actual polygraph, he was sent out of the room to calm down. He said that he only looked at websites that were public facing internet websites. Each website has a legal disclaimer regarding federal law concerning child pornography. Applicant never used search terms such as "minor," "underage," or "child." He only looked for mature women. When he told the polygrapher during the pretest interview that he might have viewed inappropriate photos of topless girls, he had no actual proof that they were underage. He just speculated that they were because they had braces on their teeth. These images popped up when he was searching for adult pornography on public-facing websites. He did not search for them. (Tr. 69-72)

Applicant testified that the polygrapher kept asking about the ages of the girls in the images and kept pushing him to say that they were younger than the age he estimated them to be. He wanted the polygrapher to stop asking questions because it made him uncomfortable. He claims that he originally told her that he believed the girls

were 18, but the polygrapher kept pushing him to admit that they were younger. Applicant said he finally gave up and said that he saw a one-minute video of a girl stripping who was about 15 or 16-years-old. He claims he had no actual factual basis that confirmed the girl in the video was that age. There was no follow-up interview. Applicant was granted a security clearance. Applicant denies utilizing the dark web to access child pornography. In 2010, he denied sharing material using a peer-to-peer service with the intent to obtain child pornography. (Tr. 73-75)

After he graduated from college in 2015, he worked for a company that required a security clearance. He submitted an updated security clearance application. He had a security clearance background investigation interview, but a polygraph was not required for the position. He was granted a security clearance. A few years later, he applied for a job with another DOD contractor. He submitted a new security clearance application in 2017 and was required to take a polygraph test in 2017. (Tr. 75-77)

When he was vetted in 2017, Applicant was required to take two polygraph tests. The first test occurred on September 1, 2017. Applicant testified the polygrapher asked him questions about his use of pornography during the pretest interview. He said that he disclosed his past comments about pornography that occurred during his first polygraph in 2010. The polygrapher started drilling him with questions. He believed that they were trying to get him to admit something. (Tr. 77-78)

The polygrapher's report indicated that Applicant said during the pretest interview that from 2015 to 2017, while viewing adult pornography on pornographic websites, on four to five occasions, images containing bestiality pornography popped up on his computer screen. He denied searching for this material. (GE 3 at 4)

Applicant was called back for an additional polygraph on November 21, 2017. The primary focus of the polygraph was his use of pornography. During the pretest interview, he disclosed that he has pirated 1.5 to 1.75 terabytes of pornography to his external hard drives. He downloaded most of the material illegally from a website where one signs up for an account to be able to pirate the pornography. Applicant created a fake name and e-mail to download the pornography. He claims he used the website because it is not easily traceable by the FBI. He estimates the value of the pornography he downloaded to be between \$1,000 and \$2,000. He told the polygrapher the pornography downloaded on his website was adult pornography. (GE 4 at 1)

The polygrapher also mentioned that Applicant said that he has searched websites to download pictures of females who were fully clothed. The polygrapher noted that on approximately 20 occasions, Applicant downloaded images of females who were under age 18. He estimated to the polygrapher that the images were of high school-aged females between age 14 – 17. He thought they were underage because of their small faces and braces. He first downloaded the images two years ago. He allegedly told the polygrapher that he last downloaded the images approximately one month before the polygraph test. (GE 4 at 1)

During the November 2017 polygraph, Applicant was asked about a statement he made during his September 2017 polygraph about seeing banners and pop-ups of bestiality pornography. He told the polygrapher during the November 21, 2017, pretest interview that he withheld disclosing that he intentionally sought out bestiality pornography on internet websites. The polygrapher noted that he first searched for bestiality pornography around 2007 or 2008 and the last time he searched for it was in 2017. Applicant testified during that hearing that he withheld the information because he was embarrassed. He first sought out bestiality pornography in 2007 when he was 14. The last time he looked at bestiality pornography was in early 2014 when he was 20. He estimated that he viewed 10-20 videos of bestiality pornography. He said he masturbated on each occasion that he used it. (Tr. 85-86; GE 4 at 2)

Regarding the November 2017 polygraph pre-test interview, Applicant told the polygrapher that the ages of the females in the “soft core” pornography videos that he downloaded were college age. He claims the polygrapher kept on asking if it was possible that they were younger. Applicant again maintained that he accessed the videos on public facing web sites which contained standard legal disclaimers against child pornography. He insists that he never searched for child pornography on websites. He never searched on the dark web. He has no specific factual basis that the women in the videos were under 18. Some of the women in the images wore braces, but he says adults wear braces too. (Tr.78-81)

Applicant testified that he used a fake name and fake e-mail address on the pornographic website because he did not want his real name on a pornographic website. He did not want the FBI to trace him because of the piracy issues. He did not want to risk being sued for pirating videos. He was worried about getting a large judgment against him. Applicant deleted all files, images, and videos in 2017. (Tr. 83-84)

Applicant testified that he has always dated women his age or older. He has never dated anyone under the age 18 as an adult. (Tr. 86-87)

Evaluation of Licensed Clinical Psychologist

All information in this section can be found at AE A.

On January 12, 2024, Applicant met with Dr. E., a licensed clinical psychologist. The purpose of the evaluation was to determine whether Applicant had any psychological condition or behavioral propensities that could negatively impact his reliability, trustworthiness, or judgment when tasked with safeguarding classified information or working in a national security sensitive setting.

The evaluation included a structured clinical interview for DSM-V Disorders: Clinical Version (SCID-5-CV); a mental status exam and clinical observations; Personality Assessment Inventory (PAI); Sexual Addiction Screening Test – Revised (SAST-R); and a review of documents provided by Applicant. Dr. E. also reviewed the following documents: the Statement of Reasons, dated October 19, 2023; Applicant’s

Answer to the Statement of Reasons, dated November 15, 2023; and letter from Applicant's treating psychiatrist Dr. N., dated November 29, 2023. (AE A)

Pertinent background information included that Applicant's father died in a car accident in 2014. Applicant was a witness to the accident. He is close to his mother and sister. After his father's death, he sought help for grief from his primary care provider. He was diagnosed with depression, anxiety, and post traumatic stress disorder (PTSD). He was prescribed various medications and saw a therapist from 2014 to 2019. He stopped seeing a therapist because he was no longer covered by his parents' insurance policy and could no longer afford the sessions. In May 2021, he began seeing Dr. N., a board-certified psychiatrist. She provided a letter indicating that she has been treating Applicant for "anxiety and major depression." He is taking medication for depression and for sleep. Applicant is compliant with his treatment and his symptoms are well controlled. She also noted that she had not seen any signs of a "sexual disorder or inappropriate behavior" during her work with him.

Applicant had issues with alcohol in the past, but began attending Alcoholics Anonymous (AA) meetings. He has been sober since August 2020. He attends AA meetings every night and gets a lot of support from his fellow AA members. He has a sponsor who meets with him weekly.

Dr. E. asked Applicant about viewing pornography depicting teenagers under the age of 18. He denied intentionally searching for illegal pornographic materials. He denied looking at pornography involving underage participants after he turned 18. He said that he may have accidentally viewed or seen thumbnails of someone who appears to be underage. He did not seek out underage pornography, he was searching for regular legal pornography. He claims during his past polygraph tests, the examiner pushed and pushed him to admit to viewing child pornography. He claims that the examiner created a story that just wasn't true.

Pertaining to the bestiality pornography, Applicant told Dr. E that he went on a site that contained bestiality pornography when he was in college out of curiosity. He does not know the number of actual times that he looked at the site. It was not arousing. It was a morbid curiosity. He has no desire to view this content in the present. He denies ever engaging in sexual behavior with an animal.

Applicant admitted to downloading pornography without paying for it. It was normal legal adult pornography. He admitted that it was theft. He has not done this for many years. He denied that he lied to the investigator in July 2022 when he denied ever downloading or viewing underage pornography.

Dr. E. states Applicant was open throughout the evaluation. His insight was normal. Applicant completed a PAI, which is 344-item, self-administered test of personality and psycho-pathology. He admitted to common failings which indicated he was forthright in his responses. His PAI profile indicates he is generally free of any interfering psychopathology and personality problems. His depressive and anxiety

symptoms are presently stable. There were no indicators Applicant is prone to engage in rule-violating behaviors or has any notable antisocial attitudes or beliefs.

Under the Summaries and Impressions section, Dr. E. indicates Applicant approached the present evaluation in an open and forthright manner. He did not detect any efforts at deception. He is a psychologically healthy stable man. He did not present any signs of paraphilic disorders. He does not appear to have ever had an attraction or clearly to have acted on any desire or arousal for prepubescent children.

Dr. E. concludes:

Applicant does not exhibit any symptoms associated with paraphilic disorder, including signs of pedophilia. He is being treated for anxiety and depression with very good success. His prognosis for continued well-functioning is excellent. He has a history of alcohol misuse, but this too is resolved, and the risk of relapse is low. He does not present any condition of behavioral pattern that could negatively impact his reliability, trustworthiness or judgment. (AE A at 8)

Personal Conduct Falsification Issues:

Applicant denied the allegation in SOR ¶ 2.c which states he falsified material facts during a July 2022, interview with an authorized investigator when he stated that he never illegally downloaded or viewed child pornography. In his response to the SOR and during the hearing, Applicant maintained that he sought and viewed pornography involving legal adults. He claimed prior admissions that he saw pornographic images of girls who appeared to be younger than 18 was taken under duress. He was a 17-year-old high school student at the time of his first polygraph. The polygrapher was constantly harassing him about pornography that he broke down crying and was shaking during the pre-test interview. He felt trapped. Applicant states that saying he saw pornographic images of girls under the age of 18 was speculation on his part. He searched for adult women. Several images popped up during his searches for pornography involving adult women that appeared to be girls younger than age 18. He was guessing that the images were of women under the age of 18. He had no proof that they were underage. (Tr. 91-94)

Regarding the allegation in SOR ¶ 3.c, which states that Applicant falsified material facts during the September 2017 polygraph examination when he denied searching for bestiality pornography. He admitted that he did not disclose that he had searched for bestiality pornography. He claimed that the examiner who conducted the polygraph examination of September 1, 2017, did not ask more probing questions. During the November 21, 2017, interview the examiner asked him more probing questions about whether he searched for bestiality pornography. He admitted that he had when directly asked. (Tr. 85-86)

Whole-Person Evidence

Several of Applicant's past and present co-workers testified on his behalf during the hearing. Mr. C., worked with Applicant in 2015. He was not his supervisor, but he was in his leadership chain. He interacted with him several times a week. They worked together for four years. He was aware of the allegations against Applicant and finds them to be out of character. He finds him to be trustworthy and credible. He recommends him for a position of public trust or a security clearance. (Tr. 18-28)

Mr. S. has held a security clearance since 2010. Applicant was hired in 2019. He became his manager in early 2020. He supervised him for about four years. His ratings were satisfactory. He was in the top 70%. Mr. S. said that this was a good rating because the contractor they worked for had a very tough evaluation system. Applicant never failed to meet performance guidelines or had inadequate duty performance. He never had issues with misconduct. He is aware of the allegation in Applicant's case. He would have no concerns working with him again. He recommends him for a position of public trust or a security clearance. (Tr. 35 – 45)

Mr. M. is the principle cyber-systems engineer at the defense contractor where Applicant previously worked. He has held a security clearance since 2014. He and Applicant started work for the defense contractor at the same time. They worked together for five years until Applicant had to be let go because of issues with his security clearance. Applicant is one of the best co-workers he has ever had. He has no concern about his conduct. Applicant had no security violations. He recommends him for a security clearance or a position of trust. (Tr. 46 – 60)

Policies

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

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all

available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline D, Sexual Behavior

The security concern for sexual behavior 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.

AG ¶ 13 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

- (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 and/or that reflects lack of discretion or judgment.

I find for Applicant with regards to SOR amended allegation SOR ¶ 1.b. Downloading photos of fully clothed young women that were posted online does not raise a security concern under Guideline D.

AG ¶ 13(a) does not apply to amended SOR allegation ¶ 1.a. Applicant maintains that he only searched for adult pornography. He did not search for pornographic images of girls under the age of 18. He told the polygrapher that while searching for adult pornography, several images popped up that he believed the girls appeared to be younger than 18 because some of them wore braces. However, he had no proof that the women were under age 18. He sought out pornography on public facing websites. There is insufficient evidence to conclude Applicant sought out or downloaded child pornography. He admits to viewing adult pornography to include bestiality consisting of sex acts between an animal and adult. While repulsive, these types of pornography are legal.

AG ¶ 13(c) applies because regardless of the legality, Applicant's history of viewing and downloading adult pornography and pornography involving bestiality makes him vulnerable to coercion, exploitation, and duress.

Conditions that could mitigate sexual behavior security concerns are provided under AG ¶ 14. The following are potentially applicable:

- (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.

Applicant viewed adult pornography around 2007 when he was 14 years old. The pornography was primarily adult pornography, but he also viewed bestiality pornography images on numerous occasions between 2007 to 2017. He stopped viewing and downloading pornography after being granted a security clearance in 2017. He was 24. AG ¶ 14(a) partially applies in that his behavior occurred during adolescence. It is given less weight because he continued searching, downloading, and viewing pornography as a young adult.

AG ¶ 14(b) applies because Applicant stopped searching, downloading, and viewing pornography over seven years ago. It is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, and judgment.

AG ¶ 14(c) applies because Applicant was forthcoming about his past pornography use. He also fully disclosed his use to current and former co-workers. It is no longer a basis for coercion, exploitation, or duress.

AG ¶ 14(d) partially applies in that Applicant's pornography use was private and discreet. His pornography habit occurred in the privacy of his home. He did not search, access, view, or download pornography in a work setting or in a public setting. I cannot conclude all of the women or the animals in the videos he viewed and downloaded gave their full consent. For this reason, this mitigating condition is given less weight.

AG ¶ 14(e) applies because Dr. E., a licensed clinical psychologist, assessed Applicant and gave him a good prognosis. He concluded that Applicant did not exhibit any symptoms associated with paraphilic disorder or pedophilia. His prognosis for continued well-functioning was excellent.

Based on Appellant's testimony and the evidence in the case file, I find the security concerns raised under Sexual Behavior are mitigated.

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 applicable:

(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.

As discussed under the Guideline D, Sexual Behavior section above, I find Applicant did not illegally view and download child pornography. While some of the women in the pornography that he viewed appeared to be of a young age, there is not enough evidence to conclude that the women were underage or that he searched for child pornography. The images of the younger looking women popped up while he was searching for adult pornography. I find Amended SOR ¶ 2.b for Applicant.

AG ¶ 31(b) applies pertaining to the allegations in SOR ¶ 2.b. Applicant admitted that he illegally downloaded 1.5 to 1.75 terabytes of pornography from websites to his hard drive. He downloaded the files without paying for them. He estimates the approximate value of all the adult pornographic files downloaded was between \$1,000 to \$2,000.

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.

Both mitigating conditions apply. Applicant illegally downloaded adult pornography from his mid-teens to his mid-20s. He has not engaged in this behavior since he was granted a security clearance in 2017. During the investigation, he admitted that he also illegally downloaded music and movies when he was younger. While concerning, it is not uncommon for teenagers and young adults to illegally download files on the internet. Applicant has since matured. He deleted all of the pornographic files he downloaded in 2017 and stopped illegally downloading pornography over eight years ago and it is unlikely to recur. It does not raise questions about his current trustworthiness and reliability. The Criminal Conduct security concerns are mitigated.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to

cooperate or provide truthful and candid answers during the national security or adjudicative processes. . . .

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

AG ¶ 16(b) deliberately providing false or misleading information; or concealing or omitting information concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

AG ¶ 16(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 characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: deliberately providing false or misleading information; or concealing or omitting information concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative: (3) a pattern of dishonesty and rule violations; and

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.

I find for Applicant with regard to the allegation in amended SOR ¶ 3.b, which alleges he deliberately falsified facts during a July 20, 2022, background investigation interview when he told the investigator that he stated that he never illegally downloaded or viewed child pornography. Applicant has consistently denied that he deliberately illegally downloaded or viewed child pornography. I find his explanations credible. The evidence in the file is insufficient to prove otherwise.

AG ¶ 16(b) applies to the allegation in amended SOR ¶ 1.c which alleges Applicant omitted that he searched for bestiality pornography during his September 1, 2017 polygraph examination. He testified that he just answered the questions they asked him. He did not volunteer that he searched for bestiality pornography. He did admit during the September 2017 polygraph interview that he observed bestiality pornography when it popped up on his computer. He also admitted during a subsequent

polygraph in November 2017, that he searched for bestiality pornography when directly asked about it.

AG ¶ 16(e) applies. Applicant's history of pornography use and his illegal downloading of pornography makes him vulnerable to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Applicant's lengthy history of pornography use, especially his viewing of bestiality pornography, if known to members of the general public could affect his personal, professional or community standing.

Under Guideline E, the following mitigating conditions potentially apply in Applicant's case:

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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

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

AG ¶ 17(c) applies. Applicant has not searched, viewed, or downloaded pornography since 2017, after being granted a security clearance. While he was not forthcoming during his September 2017 polygraph interview about searching for bestiality pornography on the internet, he fully disclosed this fact to the polygrapher who conducted the second polygraph test. More than seven years have passed since his last involvement with pornography. He deleted all of the pornographic files on his computer in 2017. He is now more mature and is engaged to be married. His supervisor and co-workers attest to his good duty performance. This conduct is unlikely to recur.

AG ¶ 17(e) applies. Applicant fully disclosed the extent of his involvement with pornography to the investigators conducting his background investigation and to his supervisors and co-workers who testified on his behalf during the hearing. He has not accessed pornography in over seven years. He has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Personal Conduct security concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines D, J, and E in my whole-person analysis.

I considered Applicant's positive employment history as an employee of Department of Defense contractors. I considered that he witnessed his father's death in a car accident in 2014 and the trauma he suffered as a result. I considered he did not attempt to access, view, or download pornography at work. I considered Applicant stopped his pornography habit over seven years ago. I considered the favorable recommendations of his supervisor and co-workers. I considered that he has had no security violations at work. I considered that he is engaged to be married.

Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns under Guidelines D, J, and E.

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: Subparagraphs 1.a-1.c:	For Applicant For Applicant
Paragraph 2, Guideline J: Subparagraphs 2.a – 2.b:	For Applicant For Applicant
Paragraph 3, Guideline E: Subparagraphs 3.a – 3.c:	For Applicant For Applicant

Conclusion

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Erin C. Hogan
Administrative Judge