



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

In the matter of:

Appearances

For Government: John Renahan, Esq., Department Counsel
For Applicant: *Pro se*

09/26/2025

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate sexual behavior guideline concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On October 1, 2024, the Defense Counterintelligence and Security Agency (DSCA) Adjudication Vetting Services (AVS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the sexual behavior guideline the DSCA AVS could not make the preliminary affirmative determination of eligibility for granting a security clearance and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on November 26, 2024, and elected to have his case decided on the written record in lieu of a hearing. He received the File of Relevant Material (FORM), inclusive of the Government's exhibits (Items 1-10), on May 5, 2025, and interposed no objections to the materials in the FORM. Applicant did not respond to the FORM with any objections or supplemental materials. The case was assigned to me on August 7, 2025.

Summary of Pleadings

Under Guideline D, Applicant allegedly (a) paid for and engaged in sexual acts at a massage parlor in his state of residence in or about July 2022 and (b) exposed his genitalia and simulated having sexual intercourse while at his place of employment, inside a national security agency building, in or around Spring/Summer 2021.

In Applicant's response to the SOR, he admitted each of the allegations with explanations and clarifications. He claimed his simulated sex acts were triggered by his wife's cheating on him multiple times with multiple men. He also claimed that his wife simulated sex acts in the same government building. He further claimed that he and his wife continued fighting for almost a year after the incident over Applicant's efforts to figure out how "to fix all the issues that led to her infidelity." He claimed, too, that he went to a massage parlor in the summer of 2022 because of his stress associated with his marriage issues. (Item 2) And, he claimed that by July 2023 he was "in his own house" and by October 2023 he was divorced and no longer encounters poor judgment and recurrent judgment lapses associated with sexual acts. (Item 2)

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in September 2013 and divorced in October 2023. (Items 3-4) He has four children from this marriage. He reported no military service.

Since February 2018, he has been employed by his current employer as a data center hardware specialist. (Items 2-4) Contemporaneously, he has worked for another employer since 2014 as an electrical systems operator. Previously, he worked for other employers in various jobs. Applicant held a security clearance between 2018 and August 2022. (Item 3) His clearance was revoked in August 2022 due to his twice failing a polygraph. (Items 5-6)

Applicant's access termination, debriefing statements, and revocation decision statement are documented in the record. (Items 7-9) Applicant continues to be employed and sponsored by his principal employer. (Item 9)

Applicant's acts of sexual misbehavior

While at work in a government building in July 2021, Applicant exposed his genitalia and simulated having sexual intercourse. (Items 5-6) In a personal subject interview (PSI) of April 2023, Applicant acknowledged his twice failing administered polygraphs covering the allegations in SOR ¶¶ 1(a) and 1(b) and having his security clearance revoked. (item 5) When asked by the investigator from the Office of Personnel Management for details of the SOR revocation letter detailing underlying sexual incidents involving Applicant in 2021 and 2022. Applicant told the investigator he could not recall the details. declined to provide specifics of the letter from DoD revoking his clearance. (Item 5) For further details of the covered incidents, Applicant referred the investigator to the prior report polygraph report and polygraph results. (Item 5)

Asked for follow-up information by the OPM investigator, Applicant assured that he has not been involved in "any kind of questionable behaviors, charged or not, sexual behaviors." (Item 5) Nor (he stated) had he engaged in any other behaviors of a criminal nature, or behaved without discretion in such a way as to cause him to be vulnerable to coercion, exploitation, duress, or blackmail. (Item 5)

In the DoD's report of investigation (ROI) of July 2022, the specific sexual incidents covered by the SOR are addressed in detail. (Item 6) Preceding Applicant's 2021 simulated sexual incident in his workplace, he learned from his wife (a former federal government contractor employee) engaged in sexual acts of her own at her federal workplace with person that Applicant believed to be a government security representative (aka "head of security"). (Item 6) Frustrated and jealous over his wife's revelation, he "simulated having sexual intercourse" inside the government complex by penetrating a gap within a metal cage surrounding a computer mainframe "with his junk." that he identified to be his genitalia. (item 6) Applicant had not previously provided this information to DoD investigators. (Item 6) Applicant consistently denied any other such incidents of sexual misbehavior and indicated he had no future intent of engaging in prostitution services.

Separately covered in the July 2022 report of polygraph examination is Applicant's July 2022 visit to a massage parlor, where he paid \$50 for a massage and was offered a "happy ending" to his massage visit. (Item 6) Applicant accepted the offer and paid the masseuse an additional \$100 for a massage of his genitalia to the point of ejaculation. (Item 6) Applicant denied any other instances of sexual favors and assured he had no future intent of engaging in prostitution services.

Policies

By virtue of the jurisdictional principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a right to a security clearance." 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. Eligibility for access to classified information may only be granted “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.

Application approvals for a security clearance are 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 AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Sexual Behavior

The Concern: 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, or 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 this basis of the sexual orientation of the individual.

Burdens of Proof

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. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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

Security concerns are raised over Applicant's receipt of masturbation in July 2022 in a massage parlor in his state of residence in exchange for monetary consideration (likely a criminal offense). Additional security concerns are raised over Applicant's exposing his genitalia and simulating having sexual intercourse while at work, inside a highly secured government building, in or around July 2021.

Sexual behavior concerns

Although never arrested or charged, Applicant's receipt of paid for masturbation in a massage parlor in July 2022 met the criminal criteria of his state's criminal prostitution statute. Under 76-10-1302 of the state's criminal statutes, acts of engagement of sexual activity with another individual for a fee, or the functional equivalent of a fee, constitutes a class B misdemeanor. (Item 10) Without evidence of extenuating or mitigating evidence in his behalf, his admitted actions qualify as unchallenged criminal conduct in his state of residence (with or without a charging state offense).

While not criminal in nature, his exposing his genitalia in his workplace (a highly sensitive government building), even if undetected at the time and an isolated occurrence, clearly reflects actions of poor discretion and judgment incompatible with the high fiduciary standards that holders of a security clearance are expected to adhere to both during and outside of their working hours. Applicable disqualifying conditions (DCs) are as follows: DC ¶¶ 13(a), "sexual behavior of a criminal nature, whether or not the individual has been prosecuted"; 13(b), "a pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop"; 13(c), "sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress"; and 13(d), "sexual behavior of a public nature or that reflects lack of discretion or judgment."

Although not dispositive, Applicant's commitments to the avoidance of acts of sexual misbehavior in the future are welcomed and reflect efforts on his part to correct the judgment lapses associated with his prior sexual encounters. Based on his stated commitments to avoid such judgment lapses in the future, he is entitled to some credit (albeit limited without a hearing opportunity to further test his credibility) under mitigating condition (MC) 14(c), the behavior no longer serves as a basis for coercion, exploitation, and duress." With his divorce and each of his cited actions fully reported in his post-polygraph reports, risks of coercion, exploitation, and duress are likely minimal.

Still, Applicant's judgment lapses associated with his public sexual encounters are too recent and serious to warrant application of any of the remaining mitigating conditions under Guideline D. Overall restoration of good judgment, reliability and trustworthiness are not established by evidence presented.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of judgment lapses associated with his public acts of sexual behavior over a still recent two-year period (2021-2022) reflect judgment lapses incompatible with his holding a security clearance.

From a whole-person perspective, Applicant has not established enough independent probative evidence of his overall, trustworthiness, reliability, and good judgment required of those who seek eligibility to hold a security clearance or sensitive position. While he is deserving of considerable credit for the contributions he has made to the defense industry and his unblemished criminal record, it is too soon to absolve him of risks of recurrent acts of poor discretion and judgment associated with public acts of sexual behavior.

I have fully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that Applicant's established acts of poor judgment associated with his past incidents of sexual misbehavior are not mitigated. Eligibility for access to classified information is denied.

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:

GUIDELINE D (SEXUAL BEHAVIOR): AGAINST APPLICANT

Subparagraphs 1.a-1.b: Against Applicant

Conclusion

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

Roger C. Wesley
Administrative Judge