



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No.24-01359

Appearances

For Government: William Miller, Esq., Department Counsel

For Applicant: John V. Berry, Esq.

07/09/2025

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines D (Sexual Behavior) and E (Personal Conduct). Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 21, 2023. On August 30, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines D and E. The DCSA acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on September 12, 2024, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 2, 2024. The case was assigned to me on April 2, 2025. On April 4, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on June 2, 2025. I convened the hearing as scheduled. Government Exhibits 1 through 4 were admitted in evidence without objection.

Applicant testified, presented the testimony of two witnesses, and submitted Applicant's Exhibits A through J, which were admitted without objection. DOHA received the transcript on June 13, 2025.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegation in SOR ¶ 1.a and denied the allegation in SOR ¶ 2.a, which cross-alleges SOR ¶ 1.a. His admission is incorporated in my findings of fact.

Applicant is a 26-year-old business analyst employed by a defense contractor since January 2024. He previously worked as an imagery analyst for another defense contractor from August 2022 until he was hired by his current employer. (Tr. 54) He earned a bachelor's degree in May 2022. He lives with his parents, has never married, and has no children. He received a security clearance in August 2022.

In September 2023, Applicant was visiting a dating website and met a woman online that he thought was pretty. He testified that he conversed with the woman for a couple hours before the conversation became intimately sexual. The sexual tone of the conversation did not raise any concerns, because he was familiar with "the hookup culture in general." When he initiated a second call, the woman was naked, lying on a bed and masturbating. He removed his clothes and masturbated. He testified that the woman did not suggest that he masturbate. He intentionally exposed his genitals to show her that he was doing it. While he was still masturbating, he saw a message from the woman telling him that she had recorded the event, and she intended to post the video online and on social websites unless he paid her \$5,000. He told her he did not have that much money, and she lowered the amount to \$3,000. He sent her \$2,000 in Bitcoin. The woman accepted the \$2,000, but she told him that she would post the video unless he paid the final \$1,000. About two or three hours after the incident, he borrowed \$1,000 from a friend and sent it to her. (Tr. 91-99, 105) He repaid his friend within a few weeks. (Tr. 22, 61-62)

The woman contacted him again in October 2023 and asked for another \$5,000. Applicant refused to pay it, told his parents about the video and blackmail by the woman who had recorded the video, and reported it to the local police. (GX 4 at 9)

Applicant blocked the woman from his email account, changed his password, and made his profile private. He has seen no indication that she posted any videos or photographs, and none of his friends have told him that they have seen anything related to his online sexual activity that was recorded by the woman. (Tr. 22, 61-65, 68-69)

Applicant had access to classified information at the time he engaged in sexual activity on the internet. (Tr. 88) He had used dating sites previously during college and after he was employed by a federal contractor. However, he had not previously engaged in the sort of online sex that led to the extortion. (Tr. 88-91)

Applicant did not report the incident to his security officer. However, when he was later interviewed in connection with his application for a top-secret clearance, he admitted the incident, because he knew that the investigator would search the police records and he wanted show that he was ashamed of his conduct and was not concealing any derogatory information. After the woman made the second extortion attempt in October 2023, he disclosed the incident to three close friends, his parents, his supervisor, and his girlfriend. (Tr. 75) He testified that he did not initially report the incident to his security officer because he was new to federal employment and did not know how derogatory incidents were handled. (Tr. 70-73)

In addition to Applicant's testimony at the hearing, he also submitted a sworn statement expressing remorse and promising to stop using dating applications and interacting with strangers online. He is now romantically involved with a woman he met while engaging in athletic activities. (AX A)

Applicant's mother is an office administrator employed by a church-related school for about ten years. She testified that when Applicant told her about the incident, she asked him why it happened, and he responded that he was "horny" at the time. (Tr. 35) She and her husband advised him to report the incident to the police and to protect his social media accounts and his bank account from any further illegal action. (Tr. 39) She testified that Applicant is very social, very religious, and has always been very open about his friends, social activities, and use of dating applications. She believes that he has matured and learned from this experience. (Tr. 40-45) She submitted a statement describing him as resilient, responsible, trustworthy, God-fearing, and community minded. She states that he has learned his lesson and has taken significant and meaningful steps to avoid situations that could make him vulnerable to threats. (AX D)

Applicant's father submitted a statement describing him as "a source of immense pride and joy." He states that Applicant is naturally warm-hearted and friendly, and that he has an "almost innocent trust in others." He believes that Applicant "has demonstrated maturity and resilience and he has turned an otherwise embarrassing situation into a valuable life lesson." (AX E)

Applicant's former supervisor submitted a statement describing Applicant as "a faithful teammate who we can always depend upon to get the job done. He vouches for Applicant's integrity, reliability, and outstanding work ethic. (AX F)

A close friend who has known Applicant since 2017 describes himself as a mentor and older brother figure for Applicant. Applicant came to him for advice after the extortion incident. He believes that Applicant was open and honest about his mistake and has grown significantly from the experience. He vouched for Applicant's reliability and integrity. (AX G)

A friend of Applicant who has known him for eight years and holds a top-secret clearance vouched for his reliability and integrity. Applicant told this friend about the extortion incident. He is confident that Applicant has taken his experience as a learning opportunity and is well qualified to hold a security clearance. (AX H)

Another friend who has known Applicant for seven years admires him for his willingness to comfort and assist others in need. He considers him honest and resilient even when faced with challenges and setbacks. Like all of Applicant's friends, he vouched for his reliability and integrity. (AX I)

Applicant's current girlfriend since January 2025 submitted a statement stating that she was taken aback when Applicant disclosed the extortion incident to her. She is confident that he made a one-time mistake. She has found that he is honest and kind and not the kind of person he was perceived to be as a result of the incident. She is confident that he will not engage in similar conduct again. (AX J)

Policies

"[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* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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. 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* at 531.

Analysis

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.

Applicant’s admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

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

AG ¶ 13(d): sexual behavior of a public nature or that reflects lack of discretion or judgment.

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

AG ¶ 14(b) is established. The first prong of AG ¶ 14(a) focuses on whether the conduct was recent. There are no bright line rules for determining when is recent. The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. See ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). Almost two years have passed since Applicant's online sexual encounter that was recorded, unbeknownst to him, and used to blackmail him. The repercussions of his conduct shocked and humiliated him. He is now romantically involved and no longer visits dating sites. I conclude that his conduct is not recent, was infrequent, occurred under unusual circumstances, and is unlikely to recur.

AG ¶ 14(c) is established. Applicant has disclosed his conduct to his family, his friends, his employer, and his current girlfriend.

AG ¶ 14(d) is not established. While Applicant's conduct was arguably private and consensual, it was not discreet.

Guideline E, Personal Conduct

SOR ¶ 2.a cross-alleges the Guideline D conduct under this guideline. 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. . ." Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying condition 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: . . . :engaging in activities which, if known, could affect the person's personal, professional, or community standing.

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;

AG ¶ 17(c) is established. Private and consensual online sex is arguably "minor." Applicant's conduct occurred only once, was almost two years ago, and happened under unique circumstances making it unlikely to recur. He has learned from the experience, and it does not cast doubt on his current reliability, trustworthiness, or good judgment.

AG ¶ 17(d) is established. Applicant has acknowledged his behavior. He has not sought or received counseling, but he has sought and received advice from his parents and friends. I am satisfied that his involvement in online sex with strangers is unlikely to recur.

AG ¶ 17(e) is established. Applicant has disclosed his conduct to his parents, supervisor, the police, and his friends, including his current girlfriend.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the 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 D and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's youth and inexperience at the time of his irresponsible conduct, his candor, and his remorse. After weighing the disqualifying and mitigating conditions under Guidelines D and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his sexual behavior and personal conduct.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline D (Sexual Behavior): FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge