

***Adjudicative Guideline D:
Sexual Behavior Short
Student Guide***

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Adjudicative Guideline D: Sexual Behavior Short

Introduction

Welcome to the Adjudicative Guideline D: Sexual Behavior Short. In this Short you will review two applicants' completed background investigation files and make a national security trust determination.

The objective is listed below:

- Review completed national security investigative files and make a national security trust determination based on Guideline D: Sexual Behavior

Meet Dave and Tina

Dave Kurtz is a 40-year-old IT Specialist who recently accepted a conditional offer of employment with a U.S. Government contractor. The position is designated as Noncritical-Sensitive/Moderate-Risk and requires Secret eligibility and access. Dave submitted the required paperwork to initiate his national security background investigation through his security office.

Tina Benson is a 32-year-old policy analyst employed by a U.S. Government agency. She recently transferred to a new position designated as Noncritical-Sensitive/Moderate-Risk that requires Secret eligibility and access. Tina submitted the required paperwork to initiate her national security background investigation through her security office.

These cases have been assigned to you. Before reviewing Dave and Tina's completed investigation files and making a national security trust determination, let's review the adjudicator's role in examining cases.

Adjudicator's Role

The most important part of an adjudicator's job is to examine a sufficient period of an individual's life to determine whether the individual is an acceptable security risk. This task should never be taken lightly, as cleared personnel may eventually have access to classified information. Adjudicators take into consideration all available and reliable information, both favorable and unfavorable, from an individual's past and present to form the "whole-person" concept, when making a national security trust determination.

Factors to Consider When Adjudicating

In evaluating the relevance of an individual's conduct, the adjudicator should consider these nine 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 for the conduct;
- (8) The potential for pressure, coercion, exploitation, or duress; and
- (9) The likelihood of continuation or recurrence.

Factors to Consider When Adjudicating – Currently Eligible

When information of a security concern becomes known about a trusted insider or an individual who is currently eligible for access to classified information or eligible to hold a sensitive position, the adjudicator should consider whether the individual:

- (1) Voluntarily reported the information;
- (2) Was truthful and complete in responding to questions;
- (3) Sought assistance and followed professional guidance, where appropriate;
- (4) Resolved or appears likely to favorably resolve the security concern;
- (5) Has demonstrated positive changes in behavior; and
- (6) Should have their national security eligibility suspended pending final adjudication of the information.

Guideline D – The Concern

Listed below is the National Security Adjudicative Guideline D: Sexual Behavior concern from Security Executive Agent Directive (SEAD 4).

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, 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.

Clarifying Guidance – Relevance to Security

Individuals' inability or unwillingness to control their sexual desires, behaviors, or emotional needs can lead to poor judgement. Inappropriate sexual behavior can reflect negatively on an individual's character and integrity, raising concerns about their ability to protect classified or sensitive information.

Individuals engaged in inappropriate sexual behavior may be vulnerable to coercion or blackmail by foreign intelligence services or other adversaries seeking to exploit their behavior for nefarious purposes. Any U.S. Government official, scientist, business traveler, or tourist with access to useful information can become the target of a foreign intelligence or security service at any time in many different countries. Any sexual relationship with a foreign national while traveling or stationed abroad in

a country that conducts intelligence operations against the United States should be of interest to adjudicators.

Investigative File Review – Dave

Now that you have reviewed the guideline and clarifying guidance, your task is to review Dave and Tina's completed background investigation files and make a national security trust determination. Please note that other adjudicative guidelines may apply. In this case you will focus only on Guideline D: Sexual Behavior.

Let's start with Dave. While reviewing Dave's investigative file and Standard Form 86, or SF-86, you read that he was accused of sexual harassment in the past. Take a moment to review [Guideline D](#), if needed. Then, review the details in Dave's file listed below.

Dave Kurtz: Investigative File

- Dave reported that 10 years ago, when he was 30, he was accused of sexual harassment by his coworker.
- His coworker reported him to Human Resources. She indicated that he had made some inappropriate comments to her that made her uncomfortable and he consistently asked her out even though she told him she wasn't interested in dating.
- Human Resources spoke to Dave about his conduct and provided him with a warning. He also completed sexual harassment training as required.
- He claimed that it never happened again. It was something he did when he was younger, and he is embarrassed by his past behavior.

Knowledge Check – Disqualifying Conditions

Does the information in Dave's file raise a valid security concern under Guideline D: Sexual Behavior?

Review the [investigative file](#), as needed, and then select the disqualifier(s) that apply to Dave's case. Check your answer in the Answer Key at the end of this Student Guide.

- (a) Sexual behavior of a criminal nature, whether or not the individual has been prosecuted
- (b) A 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
- (d) Sexual behavior of a public nature or that reflects lack of discretion or judgment
- No disqualifying conditions apply

Knowledge Check – Mitigating Conditions

Dave's previous sexual harassment behavior is a security concern and therefore disqualifying. However, each Adjudicative Guideline has specific mitigating conditions that may reduce the severity of the disqualifying behavior and overall security concern and permit a favorable national security trust determination. Do any mitigating conditions apply to Dave's case?

Review the investigative file, as needed, and then select the mitigator(s) that apply to Dave's case. Check your answer in the Answer Key at the end of this Student Guide.

- (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 good 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.
- (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.
- No mitigating conditions apply.

Summary – Dave

The information from Dave's background investigation raised a concern under Guideline D. However, Dave completed the required sexual harassment training, and he has not had an incident in the last ten years. This concern can be mitigated.

When making a national security trust determination, remember that an investigative file may have multiple adjudicative concerns. This training Short focuses only on National Security Adjudicative Guideline D.

Investigative File Review – Tina

Now let's look at Tina. Your task is to review Tina's completed investigation files and make a national security trust determination. Please note that other adjudicative guidelines may apply. In this case you will focus only on Guideline D: Sexual Behavior.

While reviewing Tina's investigative file and SF-86, you read that she is engaging in sexual behavior that reflects a lack of discretion. Take a moment to review [Guideline D](#), if needed. Then, review the details in Tina's file listed below.

Tina Benson: Investigative File

- Tina, a civilian employee, works as a policy analyst for the U.S. Government. Due to her job responsibilities, she travels extensively all around the world.
- She admitted that during her travels she engages in many sexual encounters but has downplayed their significance. They were primarily with people she met in the offices she visited in various countries as well as people in her working groups. She claimed that they were purely recreational activities and had no bearing on her job performance. However, she is unable to stop.
- She indicated that the sex was consensual.
- She noted that her coworkers and spouse are unaware of what is going on, as she is afraid that they would report it.

Knowledge Check – Disqualifying Conditions

Does the information in Tina’s file raise a valid security concern under Guideline D: Sexual Behavior?

Select the [investigative file](#), as needed, and then select the disqualifier(s) that apply to Tina’s case. Check your answer in the Answer Key at the end of this Student Guide.

- (a) Sexual behavior of a criminal nature, whether or not the individual has been prosecuted
- (b) A 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
- (d) Sexual behavior of a public nature or that reflects lack of discretion or judgment
- No disqualifying conditions apply

Knowledge Check – Mitigating Conditions

Tina engaging in sexual behavior that reflects a lack of discretion is a security concern and therefore disqualifying. However, each Adjudicative Guideline also has specific mitigating conditions that may reduce the severity of the disqualifying behavior and overall security concern and permit a favorable national security trust determination. Do any mitigating conditions apply to Tina’s case?

Review the [investigative file](#), as needed, and then select the mitigator(s) that apply to Tina’s case. Check your answer in the Answer Key at the end of this Student Guide.

- (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 good 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.
- (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.
- No mitigating conditions apply.

Summary – Tina

The information from Tina's background investigation raised a concern under Guideline D. Tina's compulsive sexual behavior reflects lack of discretion and judgment, and she has made no effort to stop this behavior or complete a program of treatment to address it. This concern cannot be mitigated. When making a national security trust determination, remember that an investigative file may have multiple adjudicative concerns. This training Short focuses only on National Security Adjudicative Guideline D.

Conclusion

Congratulations! You have completed the Adjudicative Guideline D: Sexual Behavior Short.

You should now be able to review completed background investigative files and make a national security trust determination based on Guideline D.

For more information on the other Adjudicative Guidelines, please see the other Shorts developed by CDSE. To review Guideline D: Sexual Behavior Short, access the Job Aid in the Course Resources.

Appendix A: Answer Key

Knowledge Check – Disqualifying Conditions – Dave

Does the information in Dave’s file raise a valid security concern under Guideline D: Sexual Behavior?

- (a) Sexual behavior of a criminal nature, whether or not the individual has been prosecuted
- (b) A 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
- (d) Sexual behavior of a public nature or that reflects lack of discretion or judgment (correct response)
- No disqualifying conditions apply

Feedback: *Dave’s previous sexual harassment of a coworker reflected a lack of discretion and judgement.*

Knowledge Check – Mitigating Conditions – Dave

Do any mitigating conditions apply to Dave’s case?

- (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 good judgment. (correct response)
- (c) The behavior no longer serves as a basis for coercion, exploitation, or duress.
- (d) The sexual behavior is strictly private, consensual, and discreet.
- (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.
- No mitigating conditions apply.

Feedback: *This sexual behavior happened 10 years ago and appears unlikely to recur.*

Knowledge Check – Disqualifying Conditions – Tina

Does the information in Tina’s file raise a valid security concern under Guideline D: Sexual Behavior?

- (a) Sexual behavior of a criminal nature, whether or not the individual has been prosecuted
- (b) A pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop (correct response)

- (c) Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress (correct response)
- (d) Sexual behavior of a public nature or that reflects lack of discretion or judgment (correct response)
- No disqualifying conditions apply

Feedback: *The conditions that raise a security concern and may be disqualifying in Tina's case include a pattern of compulsive, high-risk sexual behavior; sexual behavior that causes her to be vulnerable to coercion; and sexual behavior that lacks discretion.*

Knowledge Check – Mitigating Conditions – Tina

Do any mitigating conditions apply to Tina's case?

- (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 good 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.
- (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.
- No mitigating conditions apply. (correct response)

Feedback: *The disqualifying conditions cannot be mitigated in this case.*