



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 21-02392

Appearances

For Government:
Andrew Henderson, Esquire, Department Counsel

For Applicant:
Alan V. Edmunds, Esquire
The Edmunds Law Firm

October 19, 2022

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on April 4, 2018. (Government Exhibit 1.) On December 10, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines I (Psychological Conditions) and D (Sexual Behavior). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

(Directive); and the Adjudicative Guidelines (AG) effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on February 16, 2022, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 25, 2022. The case was assigned to me on April 5, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on April 7, 2022. The case was heard on May 24, 2022. DOHA received the transcript (Tr.) of the hearing on June 3, 2022.

The Government offered Government Exhibits 1 through 8, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibits A through Q, which were also admitted without objection. He asked that the record remain open for the receipt of additional documentation. Applicant timely submitted Applicant Exhibits R, S, and T, which were admitted without objection. Applicant submitted Applicant Exhibit U outside of time, and it was admitted over Department Counsel's objection. The record closed on June 6, 2022.

Findings of Fact

Applicant is 45 years old and married with two children. He has a bachelor's degree and a master's degree. He retired from the Navy in 2019 as a lieutenant commander (O-4). Applicant is employed by a defense contractor as a program manager and is attempting to retain a security clearance in relation to his employment. (Government Exhibit 1 at Sections 12, 13A, 15, and 17; Applicant Exhibits J, K, L, and N.)

Paragraph 1 (Guideline I: Psychological Conditions)

The DoD CAF alleged in this paragraph of the SOR that Applicant is not eligible for access because he has an emotional, mental or personality condition that can impair his judgment, reliability or trustworthiness.

Paragraph 2 (Guideline D: Sexual Behavior)

The Government alleged in this paragraph of the SOR that Applicant is ineligible for clearance because he has engaged in sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject Applicant to undue influence, coercion, exploitation, or duress.

The following discussion will be primarily chronological. During a period of psychological treatment discussed below Applicant was engaging in several extra-marital affairs and other addictive sexual activities.

The Government stated at the hearing that they were not proceeding on SOR allegations 1.a, 1.b, and 1.d. Those allegations solely concerned mental health

counseling obtained by Applicant. Paragraph 27 of the AG, which sets forth the concern under this guideline, states in pertinent part, "No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling." Based on the Government's representation, SOR allegations 1.a, 1.b, and 1.d are found for Applicant. Allegation 2.b is hereby amended to conform with the above findings. It now reads, "That information set forth in subparagraph 1.c, above." (Tr. 8.)

Applicant had a series of sexual relationships with women who were not his wife starting in 2016 and ending in 2018. Three of these were "one-night stands." A fourth was a long-term emotional and sexual relationship that lasted several months. All of these incidents occurred while Applicant was on active duty with the Navy. He has stated that he has not engaged in extra-marital sexual activity since 2018.

Applicant has also stated that he has a long-term addiction to pornography, which he is unable, or unwilling, to stop. As described further below, he has been receiving therapy for these issues since 2017. He also participates in a 12-step program for sex addiction.

Government Exhibit 2 consists of Applicant's response to DOHA interrogatories. Specifically, the exhibit includes the Reports of Investigation (ROI) of Applicant's interviews with authorized investigators from the Office of Personnel Management. Those interviews will be discussed as appropriate.

Applicant's first affair began in approximately October 2016 and continued into 2017. He became emotionally as well as sexually involved with this person. They corresponded on social media, and met several times for sex. He described this relationship in an ROI dated April 5, 2019. (Government Exhibit 2 at 10; Tr. 36-37, 57-58.)

Applicant began voluntary psychiatric and psychological treatment while he was on active duty in the Navy on March 21, 2017. In his initial intake interview he stated a desire to receive treatment for anxiety and depression symptoms. He also stated that he had issues with pornography. He was diagnosed with "Adjustment Disorder with depressed mood." There is no indication that he discussed his extra-marital sexual relationship with his therapist at this time. (Government Exhibit 7 at 1-11.)

Applicant's second affair involved a single incident with a woman he met on work-related travel in 2017. He stated in his testimony that there was an additional one-night incident with a different woman, also in 2017. This incident was not otherwise revealed until the hearing. (Government Exhibit 2 at 11; Tr. 37-38.)

Applicant joined a 12-step program (Sex Addicts Anonymous) in December 2017. His sponsor from this program provided a letter in support of Applicant. (Government Exhibit 2 at 10-12; Applicant Exhibit E at 2; Tr. 30-31.)

Applicant's fourth sexual liaison was a one-night stand with a different woman that occurred sometime in 2018. He further testified that he contacted his 12-step group sponsor the day after this happened. (Government Exhibit 2 at 11; Tr. 37-38, 45-46.)

Applicant testified that he realized his extra-marital sexual activity amounted to commission of the offense of Adultery under the Uniform Code of Military Justice (UCMJ). He did not tell his command or security officer about his conduct. (Tr. 46.)

The next note in the Navy medical file is from March 22, 2018. The note includes a diagnosis that Applicant continues to suffer from "Adjustment Disorder with depressed mood." Pertinent excerpts from the Progress Notes are as follows, "Patient [Applicant] reported that he had a period of almost one month with no social media. During that time however, patient appears to have reverted back to many his old habits (i.e. drinking more than agreed-upon; talking to old flings). Patient eventually re-downloaded many of the social media apps." There is no indication that he discussed his extra-marital sexual relationships with his therapist at this time. (Government Exhibit 7 at 13-18.)

Applicant filled out an e-QIP on April 5, 2018. (Government Exhibit 1.) Section 21 of the questionnaire asked Applicant about mental health treatment. Under "Optional Comment" he stated, "I have sought out and continue to receive medical mental health treatment and counseling for Anxiety, depression, and PTSD symptoms relating to traumatic experiences growing up in a region with high rates of violent crime, as well as deployment to Iraq in 2013-2014."

The next note in the Navy medical file is from May 29, 2018. The diagnosis continues to be "Adjustment Disorder with depressed mood." It appears that Applicant has told his providers of his extra-marital affairs by this time. Pertinent excerpt from the Progress Notes are as follows:

Patient reported that he failed with his goal of nonsexual behavior outside of his work responsibilities (while on travel). Patient reported that he called his sponsor after the behavior. Patient stated that he has started to recognize how "addicted" he is to sexual pursuits. Patient reported that his sponsor taught him about the 3 circles of addiction. Patient talked about the correlation between his drinking behavior and his acting out sexually. Patient talked about the benefits of continuing to go to SA [Sex Addicts Anonymous] meetings. (Government Exhibit 7 at 19-24; Tr. 39.)

Applicant was interviewed on June 5, 2018. The ROI stated, "There is nothing in the Subject's background that can be used against him for blackmail or coercion." There is no mention in the ROI that Applicant discussed his history of sexual activity outside of marriage or his problems with pornography with the investigator. (Government Exhibit 2 at 3-8.)

The next note in the Navy medical file is from August 24, 2018. This meeting appears to have been precipitated by his two primary providers (Dr. F and Dr. R). Pertinent excerpts from the Note are as follows:

Patient informed that he was being rescreened for his security clearance (TS/SCI) and that different investigators had approached both of us about his treatment. It was discussed with the patient that we both had reservations about not making the proper authorities aware of his apparent addiction to sexually related behavior/environments. Patient was informed that both providers would be making comments on his reevaluation of his security clearance in regards to his treatment of his sexually related behavior.

Patient has been compliant with all treatment recommendations to date. Patient has been significantly involved in the SA community and has a sponsor that he checks in with regularly. Patient routinely meets with his pastor, attends therapy and is managed with medication by Psychiatry for his sexual addiction. (Government Exhibit 7 at 25.)

Applicant was asked by me whether he told his command or security officer that his therapists were going to notify Federal investigators of his sex addiction. He stated, "I did not. And, truth be told, when I was at that particular Command, I was only operating at a Secret Clearance. I did not even know who the FSO [Facility Security Officer] was. I think my intent was just to be honest with the background investigation." (Tr. 56-57.)

The next note in the Navy medical file is from September 21, 2018. The diagnosis changed at this point to be "Other Sexual Disorders, Sex Addiction." Pertinent excerpts from the Progress Notes are as follows, "Patient and therapist talked about his impulsive sexual behavior. Patient talked about the concept of seeing his addiction as 'an enemy' and how he needed to approach like 'a battle.' Patient talked about the importance of not making excuses for his behavior or why he has not made more progress with his 12-step SA program." (Government Exhibit 7 at 27-32.)

The next note in the Navy medical file is from December 13, 2018. Applicant had a change in providers at this time. The diagnosis changed at this point to "Generalized Anxiety Disorder and Dysthymic Disorder." Pertinent excerpts from the Intake Notes are as follows:

Overuse of pornography & sexual behavior incompatible with personal ethics. Patient believes that his struggles with pornography are related, as alcohol is, to his proclivity to "distract myself" from personal discomfort. Believes he was exposed early in life to pornography, that it was normalized by other men, and believes that it has been destructive for him in that it often insidiously takes up greater amounts of time than he plans. Further, it has invited his actual acting out (consensual extramarital sex) with women he

meets either while traveling or through Tinder/online “hook-up” sites. Has wanted to stop watching porn and couldn’t control his use of it over time (up to several hours per day in more remote hx [history]). Seems to evaluate women physically (my wife is really beautiful, but this other woman was beautiful too) and sees porn as primarily a problem for men (i.e. lack of empathy for the women involved).

He struggles with monogamy (even w/in the past year has had a 6 month affair and can’t stop “checking out what’s on Tinder”) as well and feels guilty about his behavior. Says wife is not OK with him having extramarital sex/relationships, that she knows about “some” of this activity, and that she is willing to stay with him “as long as she believes I’m working on it.”

Personal inadequacy and career disappointments: Pt got passed over twice for CDR, says “I got derailed,” and he’ll be retiring after this tour at 20 years. . . . He feels left out and left behind, as his friends are “SEALS and astronauts.” He feels profoundly inadequate, like a failure personally and professionally. He admits he has little insight about how this, along with early attachment issues, may contribute to his psychiatric symptoms and dysfunctional behavior. (Government Exhibit 7 at 33-42; Tr. 39-40.)

Applicant and his wife deny that he had a six-month affair in the 2017/2018-time frame with yet another woman. (Applicant Exhibit R; Tr. 38-40.)

As stated, Applicant was interviewed by a DoD investigator on April 5, 2019. The investigator reported in pertinent part:

Subject was told that the initial complaint for medical and psychiatric treatment was overuse of porn and sexual behavior incompatible with personal ethics. The provider does not trust Subject’s behavior due to his impulsive sexual behavior and feels the condition may impair Subject’s judgment and reliability. Subject is treated/counseled for this behavior. Subject feels the provider may feel that way because Subject had an affair and considers himself a sex addict. Subject provided Dr. [R] may be concerned about Subject being blackmailed because of the behavior which he struggled with outside of his marriage with meeting other women which started two years ago. Subject is not proud of it and got the help himself when he started this behavior two years ago. (Government Exhibit 2 at 10.)

The ROI continued:

Subject does agree with his judgment and reliability is not optimal and that he engaged in extramarital sexual activity when he travels which was discussed earlier in the interview. Subject feels that he agrees with the provider stating that his impulsive sexual behavior and feels his condition

may impact Subject's judgment and reliability on his personal matters but has no effect on his professional life. (Government Exhibit 2 at 12.)

The last note in the Navy medical file is from April 17, 2019. The diagnosis changed to "Other Sexual Disorders, Sex Addiction and Narcissistic Traits." Pertinent excerpts from the Progress Notes are as follows:

SA Meetings: multiple times per week (tele-meeting by phone or in-person.) . . . Patient stated that he is due to get his one-month chip soon. Patient talked about his frustration with his background investigation. Patient talked about boundaries at work since finding out that 2 women have now blocked him on social media. Patient talked about his relationship with his wife. (Government Exhibit 7 at 43-48.)

Applicant stated that he received counseling from his mental health medical providers concerning his conduct with co-workers discussed immediately above. He was not counseled by his command. (Tr. 42-45.)

Applicant testified that he believed that he has or did have Generalized Anxiety Disorder and Depression as described by his Navy providers above. He further stated that he believed the conditions are controlled by psychiatric treatment and medication. (Tr. 25.)

As noted, Applicant retired from the Navy in 2019. He then began receiving treatment from a Dr. J at the VA starting in November 2019. The Progress Notes from the VA are Government Exhibit 8. They begin on June 5, 2020.

The Progress Note of September 11, 2020, stated in part, "He [Applicant] reported relapse on his sexual compulsion maybe 4 times in two weeks." (Government Exhibit 8 at 7.)

Applicant testified that the above probably referred to his looking at pornography. He also conceded that it might have been his conduct in "checking" women out on social media. (Tr. 41-42.)

The same Progress Note also stated under "Assessment/Plan," "After 3 months of no compulsive sexual behavior he relapsed acouple [sic] of weeks ago." (Government Exhibit 8 at 10.)

Applicant testified that the above incident involved pornography. The date of the Note is stated incorrectly as, "June 5, 2021," in the question asked by Department Counsel. (Tr. 40-41.)

Applicant and his wife began couple's therapy with Dr. M in January 2021. The therapy was for "Process Addiction/Sex Addiction." He began individual therapy in August 2021. Dr. M provided a letter dated February 8, 2022. (Applicant Exhibit P.) The provider

wrote that both Applicant and his wife were cooperative in the process. The letter goes on to state, "Both [Applicant and his wife] have made progress and there has been better communication and less conflict in the relationship. [Applicant] has also made progress with his individual treatment and been able to decrease and eventually eliminate the behaviors for which he was seeking help."

Applicant was interviewed by a DoD psychiatric consultant (Dr. S) on May 10, 2021. His report is Government Exhibit 5. Applicant's history as related by him to Dr. S basically tracks with other documents in the record and is not repeated here. Dr. S also spoke to three coworkers of Applicant and one of his current mental health providers.

Mr. H was interviewed by Dr. S. He is a supervisor of Applicant for Applicant's employer. He stated that Applicant is a "diligent worker who is a highly engaged team player." He further stated that he does not believe Applicant has any mental health or substance abuse issues. Finally, he stated, "Source [Mr. H] believes that the Subject's judgment, reliability, and trustworthiness are intact and highly recommends him." (Government Exhibit 5 at 5.)

A second supervisor of Applicant, Mr. M, was also interviewed. He is the program manager for a military program that works with Applicant's employer. Mr. M had a different view of Applicant, stating that he would often react emotionally when receiving feedback or direction. He also discussed a particular issue he had concerning Applicant's interactions with Ms. V, further discussed below. Mr. M felt that Applicant displayed poor judgment in his interactions with Ms. V and Mr. M about the issue. Mr. M concluded by saying:

Source [Mr. M] stated that he has concerns about Subject's judgment based upon the incidents discussed. Source denied any concern about the Subject's reliability. Source believes that the Subject is mostly honest but will omit details or information. Source was initially ambivalent about recommending the Subject but eventually confirmed that he would recommend him if there were an abundant amount of oversights and controls in place to scaffold the Subject. Source stated that the Subject currently works with several constraints and boundaries within his role which were placed there out of necessity. (Government Exhibit 5 at 5-6.)

Ms. V is the security officer for a military program that works with Applicant's employer. She is not his company's security officer. She discussed a particular incident with Applicant that she felt was not handled properly by Applicant. The incident is not related to the mental health or sexual misconduct issues discussed in this decision, but she and Mr. M believe it showed poor judgment on Applicant's part on that particular occasion. Speaking in general about Applicant Ms. V stated:

Source credited the Subject with making improvements with coaching and appropriate changes when corrected. However, Source also expressed

concerns about the Subject's emotional stability and believes that there is an ever-present possibility that he may react aggressively to situations that are not favorable to him. Source confirmed that there were interpersonal issues between him and other workers but would not go into further detail. Source deferred on speaking to the Subject's ability to have good judgment as she has significant reservations. Source denied any concerns about Subject's reliability. Subject deferred speaking about the Subject's honesty and trustworthiness due to omissions. Source stated that she would recommend him with similar caveats as Mr. [M]. (Government Exhibit 5 at 6.)

Applicant denied that he had ever acted in the way described by Mr. M and Ms. V in their interviews with Dr. S. He believes that their incorrect statements are due to personality conflicts between the three of them. (Tr. 49-52.)

Dr. S also talked to Dr. C, who is Applicant's psychologist. She has been treating Applicant since January 2021. She stated:

Subject has weekly sessions and has engaged in EMDR [Eye Movement Desensitization and Reprocessing Therapy] and is currently working on a book on sex addiction. Source reported that the Subject presented with a variety of psychological and behavioral issues that were rooted in his upbringing. Subject seeks validation and is susceptible to anything that he perceives as rejection. Subject may respond to perceived rejection with anger, anxiety, or mood lability. Subject may act out or become confrontational with those involved in such instances as well. Source confirmed that the Subject may also seek validation from other pursuits or people. Source denied that [sic] any knowledge of affairs beyond those already discussed by the Subject. Subject has shown improvement through the EMDR and is more insightful towards his triggers but is vulnerable to personalizing and emotional reasoning. Source believes that the Subject has good judgment in regard to national security work and stated that his issues with judgment are mainly in regard to his personal life. Source believes that the Subject is reliable and is a trustworthy and moral individual. (Government Exhibit 5 at 6-7; Tr. 54-55.)

Dr. S gave the following Diagnostic Impression, Diagnosis, and Prognosis on page 7 of Government Exhibit 5. The Diagnostic Impression is as follows:

The Subject was referred for evaluation to determine if his previous diagnoses or behaviors impair his judgment, reliability, or trustworthiness. The Subject has been previously diagnosed with depressive disorders and self-reported anxiety in the context of performance or perception of others. While the Evaluator concurs that the Subject has suffered from both kinds of symptoms in the past, the symptoms are better explained through the lens of a personality disorder. The Subject's internal drive for validation,

negative self-image, and affective sensitivity appear to have been developed over the course of his childhood and adolescence and have been present across his lifespan. The majority of the maladaptive issues previously discussed were the direct result of him experiencing rejection, needing validation, being affectively triggered by external events, or questioning his identity/purpose in life. The behavioral expression of these issues were the affairs, increased use of pornography, and increased use of alcohol. The diagnoses below attempt to best capture his expression of psychological issues over the reported timeline.

The Diagnoses are, "Other specified personality disorder, mixed cluster B traits; History of social exclusion or rejection; and History of parent/child relational problem."

Dr. S provided the following Prognosis:

The presence of a personality disorder with these traits will inherently place the Subject at a varying amount of risk in terms of judgment, reliability, and trustworthiness. That level of risk will depend heavily upon the Subject's perception of stability and self-worth across personal and professional areas and his ability to manage his emotional reactivity. When balanced, the Subject will likely perform well. When unbalanced, the Subject will likely express the aggressive/labile traits mentioned by his references. The events previously discussed and the collateral information gathered over the course of this evaluation show explicit examples of how his emotional reactivity and perception of rejection can result in impulsive behaviors and unfavorable decisions. Credit should be given to the Subject who responded to his previous affairs by initiating counseling, being dedicated to treatment, and searching for ways to avoid future unfaithfulness. This illustrates that the Subject is willing to adapt and seek answers to his problem with the correct motivation, boundaries, and consequences. However, it should be underscored that such adjustments occurred after he acted in ways, that he admits, were against his values, impulsive, and had the possibility of causing irreparable damage to his family. It should also be noted that the Subject had already been engaged in both counseling and medication treatment when the affairs occurred. While his last indiscretion occurred in 2018, he still struggles with emotional reactivity as evidenced by the testimony provided by his therapist and references. The feedback from those who have regular contact with him in a professional environment should be taken very seriously as positive impression management is always a factor during cross-sectional evaluations.

A Progress Note dated January 11, 2022, from the VA stated that Applicant had attended a program aimed at reducing his compulsive sexual behaviors. The Progress Note also stated, "He [Applicant] reported relapsing on sexual compulsive behavior but not drinking." (Government Exhibits 6 and 8 at 6.)

The last VA Progress Note available is from February 16, 2022. Applicant told his therapist that there had been a “slight exacerbation of his sexual obsession. But he has not acted on them.” (Government Exhibit 8 at 1.)

Applicant Exhibit Q is a letter February 28, 2022, from Dr. J about Applicant. In part the letter says, “He [Applicant] is taking his medications and comes to his follow-up appointments regularly. He has been seeking help and has agreed with different treatment modalities and he has been noticing an improvement in his symptoms.”

Dr. J submitted an additional letter dated June 3, 2022. The letter states in pertinent part, “He [Applicant] is compliant with the treatment plan. He is taking his medications and he comes to his follow-up appointments regularly. He is very motivated to seek help and has agreed with different treatment options including medication, different psychotherapy modalities, and rehab programs. Based on his report and my evaluation it sounds like that [sic] he is improving.” (Applicant Exhibit U.)

Applicant testified that he is following Dr. J’s advice “to the letter.” Applicant also testified that he believed he had obtained adequate skills to curtail the adverse sexual activity that was alleged, particularly that caused by professional or personal disappointments. He stated that there have been several contributors to his ability to control his behaviors, “The skills and treatment I have received in counseling, my support group and support of my wife, and accountability and accountability partners.” (Tr. 25-27, 48-49.)

With regard to adverse sexual activity, Applicant testified that there were several factors that would prevent him from engaging in such conduct again, “Number one, the fact that I do not want to do that. Number two, that immediately when I started manifesting that behavior, I recognized that this was not something I wanted to do, and I sought help for it. Number three, my support group. Number four, the support of my family.” (Tr. 32.)

Applicant testified that his last relapse of sexual compulsion was several months before the hearing, sometime in 2021 or early 2022. He stated that those behaviors include “looking at pornography, contacting women with the intent to flirt or otherwise make liaisons.” He further stated that his wife is aware of this activity. (Tr. 47-48.)

Applicant’s wife submitted two declarations on his behalf. In Applicant Exhibit A she stated that she is aware of the allegations contained in the SOR and that the two of them are attending counseling. She believes Applicant has shown “significant improvements and no longer participates in the concerned conduct.” (Tr. 46-47.)

After the hearing Applicant’s wife prepared Applicant Exhibit R. In it she stated, “He has been totally forthcoming and honest with me, his support group SG, and his therapist about his activities. He will even share with me an incident when he would use

his browser on the computer for searches. This is an activity that has abated for some time.” She ended her statement, “Our marriage has never been better. The change in my husband over the last four (4) years is remarkable. I totally support his efforts and appreciate the discipline that he has shown to improve his behavior, our marriage, and our family life.” (Tr. 27.)

Mitigation

Applicant had a successful military career, as shown by documentation from the Navy. (Applicant Exhibits D, F, G, and I.)

Applicant received positive recommendations from a fellow Sailor who served with Applicant. He stated, “Having known [Applicant] for over 20 years now, I have consistently known him to be a loyal friend, competent professional, and dedicated patriot of impeccable integrity with an overwhelming devotion to serving the country he loves.” (Applicant Exhibit E at 1; Tr. 29.)

A former supervisor of Applicant during his time in the Navy also submitted a letter stating, “I absolutely know he exceeds every standard for trustworthiness and character both interpersonally and with regard to national security. In the five years I’ve known [Applicant], he can be relied on to perform all duties with integrity and honesty.” (Applicant Exhibit E at 3; Tr. 31.)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence

contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Applicant has been suffering from a compulsive psychological condition for many years. This condition manifests itself primarily in sexual and sexually-related activity that can consist of excessive pornography use, inappropriate inter-personal activity at work, use of the computer and social media to contact and “flirt” with various women, and serial acts of adultery.

Applicant has been “addicted” (his word) to pornography for many years. Starting in 2016 and continuing until at least 2018 the behaviors increased after he was passed over for promotion. As set forth at length above, Applicant had four sexual relationships outside of marriage, one a long-term affair lasting from four to six months. There is some indication that there may be one or two more, but Applicant and his wife deny it. He also would use various dating “apps” to meet and flirt with women online. It appears he also engaged in inappropriate inter-personal conduct at work, resulting in two female coworkers blocking him on social media. Applicant testified that he has not had an affair since 2018, but he continues to suffer from obsessive sexually-related thoughts and occasional obsessive conduct. According to Applicant, the last time this happened was late 2021 or early 2022.

Applicant began treatment in 2017 while still on active duty with the Navy. The extensive excerpts from the Progress Notes are included to show both what Applicant

told his providers about his conduct, and also what was missing from his reports. It appears that Applicant knew he needed help, but did not inform his providers that he was having sex outside of marriage for several months. As the providers correctly noted, they needed to make the Government aware of his “apparent addiction to sexually related behavior/environments” during his periodic reinvestigation. At that point, he had the opportunity, indeed the responsibility, of informing his command and his FSO that his mental-health providers believed that his conduct could make him a security risk. His excuse is that he only had access to Secret material, and did not know the person who was the FSO.

Applicant has attempted to create a false dichotomy between his private conduct and professional conduct that does not exist. In fact, he has said that his impulsive sexual behavior may impact his judgment and responsibility on a personal level, but has no impact on his professional life. That is wrong. For example, Applicant was involved in extra-marital sex repeatedly while on active duty with the Navy. He was highly vulnerable at that time to coercion and exploitation, yet he seemed not to understand that fact at all. This inability to understand or appreciate why his conduct can make him a security risk pervades the entire record.

Applicant has received extensive treatment over the years. Currently he goes to multiple therapy sessions each week, is on a medication regimen, and is part of a 12-step program. There is some indication that Applicant’s condition is getting under control, but his conduct has been too extensive for too long.

An additional concern for me is that Applicant has not always been an accurate reporter of his conduct. It is obvious that for a considerable period of time he misstated or understated the extent of his conduct to his providers. His credibility, as well as his judgment, are suspect.

Paragraph 1 (Guideline I: Psychological Conditions)

The security concern relating to the guideline for Psychological Conditions is set out in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline at AG ¶ 28 contains five conditions that could raise a security concern and may be disqualifying. Two conditions are established:

- (a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors; and
- (b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability or trustworthiness.

The guideline at AG ¶ 29 contains five conditions that could mitigate security concerns:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and
- (e) there is no indication of a current problem.

With regard to Guideline I, Applicant has voluntarily entered into treatment for a condition that may be amenable to treatment. Dr. J, the VA psychiatrist, says, "Based on his report and my evaluation it sounds like that he is improving." That statement does not qualify as a favorable prognosis. AG ¶ 29(a) and (b) are minimally applicable under the circumstances of this case.

AG ¶ 29(c) does not apply because there is no mental health finding that the previous condition is under control or in remission and has a low possibility of recurrence or exacerbation. Indeed, the best that can be said is that treatment is helping Applicant maintain minimal control over his impulses through great effort.

Applicant testified that he continued to deal with the condition within a few months of the hearing. Accordingly, it cannot be said that there is no indication of a current problem or signs of emotional instability. AG ¶ 29 (d) and (e) do not apply. Guideline I is found against Applicant.

Paragraph 2 (Guideline D – Sexual Behavior)

The security concern relating to the guideline 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 13. Four are applicable in this case:

- (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 or that reflects lack of discretion or judgment.

The following mitigating conditions are possibly applicable under 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;
- (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's obsessive sexual conduct involved acts of a criminal nature, specifically adultery while on active duty, which is an offense under the UCMJ. His counsel argued that adultery is seldom prosecuted, minimizing the impact of this disqualifying condition. That argument has been considered and is rejected. AG ¶ 13 (a) applies.

All of Applicant's sexual conduct as set forth in the record, including the acts of adultery, were and are compulsive, high-risk, and self-destructive. By their very nature they reflected a lack of discretion and judgment that caused him to be vulnerable to coercion, exploitation, or duress. AG ¶ 13 (b), (c), and (d) do apply.

Applicant's wife appears to be fully aware of the extent of his activities. He has stated that his management also knows about them. AG ¶ 14(c) has minimal application.

Applicant's sexual liaisons were mutual, private, and discrete. However, his other sexually obsessive conduct is of an in-person or virtual nature. Accordingly, it cannot be said to be private or discreet. AG ¶ 14(d) also has minimal application.

Based on the current state of the record, I cannot say with any degree of confidence that Applicant's conduct is unlikely to recur or does not cast doubt on his current reliability, trustworthiness, or judgment. AG 14(b) does not apply.

Finally, for the reasons set forth under Guideline I, I cannot presently find that his conduct is readily controllable with treatment and that he has a favorable prognosis, AG ¶ 14(e) does not apply. Guideline D is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has not mitigated the concerns regarding his psychological conditions and related sexual conduct. He has not minimized the potential for pressure, coercion, or duress, and I cannot find that there is little likelihood of recurrence. Overall, the record evidence does create substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

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

Paragraph 1, Guideline I:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline D:	AGAINST APPLICANT
Subparagraphs 2.a and 2.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 or continue Applicant's national

security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge