



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



In the matter of: )  
)  
) ISCR Case No. 21-01959  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: Brittany Forrester, Esq., Applicant’s Counsel

January 12, 2023

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On April 27, 2022, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines D, J and E. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on May 3, 2022, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on July 26, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 2, 2022, scheduling the hearing for September 1, 2022. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 4, which were admitted without objection. Applicant testified on his own behalf, and called his wife to testify on his behalf. The Applicant offered Exhibits (AppXs) A through N, which were admitted without objection. The record was left open until September 8, 2022, for receipt of

additional documentation. Nothing further was offered into evidence; and as such, the e record was closed on September 8, 2022. DOHA received the transcript of the hearing (TR) on September 12, 2022.

### **Findings of Fact**

Applicant initially denied the allegations in SOR ¶¶ 1.a. and 1.b., but subsequently admitted all the allegations of the SOR with explanations. (TR at page 31 line 20 to page 32 line 14.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 38-year-old employee of a defense contractor. He has been employed with the defense contractor since 2014. (GX 1 at pages 7 and 15.) Applicant was married in December of 2015, and has two children. (TR at page 20 line 17 to page 21 line 17, and GX 1 at page 21.)

### **Guideline D - Sexual Behavior, Guideline J - Criminal Conduct & Guideline E - Personal Conduct**

1.a., 2.a. and 3.a. Applicant admits that he inadvertently viewed child pornography from about 2000~2013. Starting when he was about 16 years old until his late 20s, Applicant, who liked “petite girls,” used the Thai word “dek” for “younger person” in his internet pornographic searches. Often, he accidentally viewed photos of underage girls. (TR at page 22 line 14 to page 28 line 25, and at page 40 line 2 to page 46 line 7.) Applicant has not viewed such images in nearly ten years.

A health care professional avers that applicant “would not have engaged in such behaviors had he not stumbled upon the images while viewing Internet pornography.” (AppX K at page 2.) This Licensed Clinical Social Worker and Certified Sex Addiction Therapist further avers: “based on my assessment, I do not believe that there is any sexual addiction present.” (*Id.*) Applicant’s spouse is aware of these allegations against Applicant. (TR at page 13 line 10 to page 19 line 10.)

Applicant has signed a Letter of Intent not to engage in such conduct in the future. (AppX N.)

1.b. 2.a. and 3.a. Applicant admits that he paid women for sexual acts from about 2002~2015. These acts included with “prostitutes in Thailand . . . three or four times,” and at massage parlors in both Thailand and in the United States. The last such conduct occurred in 2015, seven years ago, before he was married, at “a Bachelor Party” in Las Vegas. (TR at page 29 line 1 to page 30 line 17, at page 32 line 13 to page 34 line 10, and at page 46 line 8 to page 52 line 12.) Again, Applicant’s spouse is aware of these allegations against Applicant. (TR at page 13 line 10 to page 19 line 10.)

Applicant has signed a Letter of Intent not to engage in such conduct in the future. (AppX N.)

## Policies

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

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

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded 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, an "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 access to classified information. 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 information.

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

## Analysis

### Guideline D - Sexual Behavior

The security concern 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. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

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

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (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.

Applicant received sexual gratification when viewing pornography involving underage girls. He also paid for sex on multiple occasions in Thailand and the United States. His conduct was criminal, and represents a pattern of high-risk sexual behavior that reflects a lack of discretion or judgment. It also creates a vulnerability to coercion. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 14 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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; 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 conduct occurred seven years ago. His wife is aware of said conduct, which does not make him susceptible to coercion, exploitation, or duress. Applicant has a favorable prognosis from a health care professional. Sexual Behavior is found for Applicant.

### **Guideline J - Criminal Conduct**

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. Two conditions apply, as discussed below:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant arguably engaged in criminal conduct by inadvertently viewing child pornography, and by paying women for sexual acts. This evidence raises security concerns under these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 32 contains two conditions that could mitigate criminal conduct security concerns:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution,

compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Sufficient time has passed since Applicant's bachelor party, his last act of arguably criminal conduct, about seven years ago. A health care professional gives him a favorable prognosis against recidivism of sexual misconduct. The evidence establishes mitigation under either or both of the above conditions. Criminal Conduct is found for Applicant.

### **Guideline E - Personal Conduct**

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant received sexual gratification by inadvertently viewing child pornography, and from paid sexual acts by women in both Thailand and the United States, on several occasions. The evidence is sufficient to raise this disqualifying condition.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

(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;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(g) association with persons involved in criminal activities was unwitting, . has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant's wife is aware of this conduct. As a result, he is not vulnerable to exploitation, manipulation, and duress. He has also produced evidence from a health care professional of rehabilitation. He has abstained from receiving illegal sexual gratification since 2015. Personal Conduct is found for Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common-sense 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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines D, J and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected at both his workplace and in his community. (AppXs D-F and I.)

Applicant is not vulnerable to coercion. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the sexual behavior, criminal conduct, and personal conduct security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline D:	FOR APPLICANT
Subparagraphs 1.a. and 1.b:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Richard A. Cefola  
Administrative Judge