



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



In the matter of:  [Name Redacted]  Applicant for Security Clearance	) ) ) ) )	ISCR Case No. 23-00932
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**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

11/20/2024

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**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline D (sexual behavior) and Guideline J (criminal conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

On September 14, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines D and J. Applicant responded to the SOR on October 4, 2023, and requested a hearing before an administrative judge. The case was assigned to me on May 3, 2024. The hearing was convened as scheduled on September 24, 2024. The Government offered five exhibits, which were marked as Government Exhibits 1-5 and admitted without objection. Applicant testified but offered no exhibits. The transcript (Tr.) was received on October 3, 2024, and the record closed on that date.

In the interests of Applicant and his family's privacy, certain names and facts have been redacted or mentioned in general terms. The facts can be found in the case file.

## **Procedural Issue**

At the beginning of the hearing, Department Counsel moved to amend to the SOR to correct the allegation in SOR ¶ 2.a. It alleged Applicant was convicted of three counts of Felony Second Degree Sexual Exploitation of a Minor, when he was actually convicted on two counts of Felony Second Degree Sexual Exploitation of a Minor. (Tr. 8-9) There being no objection, SOR ¶ 2.a is amended to read as follows:

On about February 23, 2023, in [County, State] you were convicted of two counts of Felony Second Degree Exploitation of a Minor. You received a suspended sentence and placed on probation through February 2027. As of the date of this Statement of Reasons, you remain on probation.

## **Findings of Fact**

Applicant is a 29-year-old employee of a defense contractor. He has worked for his current employer since 2016. He was granted a security clearance in 2017. It was suspended in September 2022. His highest level of education is an associate's degree. He is currently studying for his bachelor's degree. He has no military service. He is married and has a two-year-old child. (Tr. at 15-19; GE 1)

Applicant admits to all of the SOR allegations. They include: he downloaded sexually explicit photos of minors and then shared them online on a social media website (GE 1 at 28-29; GE 2 at 4); between about April 2017 to about December 2021, he compulsively viewed pornography that included images and videos of minors (GE 2 at 2); and on about February 2023, he was convicted of two counts of Felony Second Degree Sexual Exploitation of a Minor. He received a suspended sentence and was placed on probation through February 2027. (GE 1 at 28-29; GE 2 at 7-11; GE 3; GE 4; GE 5)

Applicant testified that he was first exposed to pornography when he was between eight to ten years old. Once he had access to the internet, his interest in adult pornography grew. He began accessing adult pornography on his family's home computer in his early teenage years. In 2016 at age 21, he began to view child pornography online. He was still attracted to adult pornography, but child pornography became another version of his addiction to pornography. (Tr. 19-22; GE 2)

Between 2016 to 2020, Applicant viewed child pornography once a day for about one to two hours a day. When he moved in with his wife, his access was reduced to about 30 minutes to one hour a day when he had time alone. His wife was unaware of his pornography use. He used a social media site to access pornography. The social media site contained groups that were interested in a particular topic. He would join a group and view pornographic material that was posted there, to include child pornography. Some of the groups consisted of 50 individuals. He accessed the social media site via his cell phone. He did not use his home or work computers. (Tr. 23, 25-26, 30)

Applicant described some of the videos as children having sexual intercourse with adults. He usually sought videos of girls who were around eight years old or older. He admits he would become sexually aroused while viewing these images. He never fantasizes about having sex with underage children. He does not consider himself to be a pedophile. He understands having sex with children is illegal and damaging to the child. He understands viewing, downloading, and possessing child pornography is illegal. He is aware that children in the videos he watched were being forced to perform against their will. He understands his actions contributed to child sex trafficking. He said he had an addiction which he could not stop. He tried quitting multiple times, but it consumed him. (Tr. 24-28)

Applicant believes that the social media site reported him to law enforcement, because he began transferring videos containing child pornography from one group to another on the site in December 2021. He had been transferring videos once or twice a week to other groups for at least six months before he was arrested on July 26, 2022. He claims he stopped viewing child pornography completely on the day of his arrest. He was banned by the social media site on the date of his arrest. The local sheriff's office arrested him and he was originally charged with five counts of Felony Second Degree Sexual Exploitation of Minors. (Tr. 34-35; GE 2; GE 3; GE 4)

On February 27, 2023, he was convicted on two counts of Felony Second Degree Sexual Exploitation of Minors. He was sentenced to between 25 and 90 months of confinement, which was suspended. He is on monitored probation until February 2027. He paid fines and court costs of \$1,385.50. He is required to register as a sex offender for 30 years. As a condition of his probation, he was to participate in therapy or evaluations as recommended; he was not to communicate nor be on the premises of any victim in this case; he was not to reside in the household with any minor children; and he was not to be employed in any capacity in which he has access to minors under 18 years old without disclosing the contents of this judgment. (Tr. 37; GE 4 at 7)

Applicant does not live with his wife and child. He lives with his parents and his wife and child live in the house that they bought a few months ago. He admits to viewing adult pornography for five months after he was convicted. He began to view adult pornography again because he found it stressful being separated from his wife and son. He moved out of the house on the day he was convicted. He fully admitted to his wife and probation officer that he was viewing adult pornography. He has not viewed adult pornography since August 2023. His laptop and phone are being monitored by the probation office. (Tr. 37-43)

Applicant and his wife currently attend counseling with a married couple, Dr. R.F. and Dr. S.F. They began attending counseling in October 2022. They attend counseling about once a week. Both Dr. R.F. and Dr. S.F. are certified biblical counselors. They have a theological background. In an unsigned letter, dated September 4, 2023, Dr. R.F., indicated that he and his wife have helped over 2,000 families with similar and varied problems. Applicant was referred to him for his pornography addiction. He has faithfully been coming to counseling with his wife. He has been willing to disclose the

information needed to help him. Dr. R.F. notes there is evidence of true repentance. He claims the treatment is working and they have observed progress. (GE 2 at 6)

Applicant has been to other counselors who had psychology degrees. He claims they were unable to help. He did not care for them because he thought they were too judgmental. He believes Dr. R.F and Dr. S.F. came in on day one and gave him answers. He said it is an absolute blessing to have a solution that finally works after over 20 years of struggling with his problem. He believes that a biblical-based view and solution has worked. (Tr. 57-59)

About two months before the hearing, Applicant starting to see another certified biblical counselor, Mr. K, because issues came up with Dr. R.F. and Dr. S.F.'s ability to counsel. Applicant is not aware of the reason, but believes it is related to legal issues that may prevent their ability to counsel. (Tr. 45-49, 58)

Applicant testified that Dr. R.F and Dr. S.F. taught him to focus on pure thoughts. They taught him to focus on things that are holy, good, and honest. He has gone back to college to study for his bachelor's degree. He believes he will get off probation early because his separation from his family is causing more harm than good. His arrest was in the local news. His family, church members, and co-workers are aware of his pornography addiction. Some know of the conviction and the reason for the arrest, but not the specific details behind the arrest. He agrees that the details make him vulnerable to blackmail. (Tr. 49-55)

## **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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.”

Under Directive ¶ E3.1.14, the Government must 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.” The applicant has the ultimate burden of persuasion to obtain a favorable security 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 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.

AG ¶ 13 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

- (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 and/or that reflects lack of discretion or judgment.

Applicant's pornography addiction, to include child pornography raises all of the disqualifying conditions under the Sexual Behavior concern. His viewing and downloading of child pornography violated criminal law. He admits that his behavior was compulsive and he was unable to stop. His viewing and downloading of child pornography made him vulnerable to coercion, exploitation, or duress. His viewing and downloading of child pornography showed of lack of discretion or judgment. AG ¶¶ 13(a) – 13(d) apply.

Conditions that could mitigate sexual behavior security concerns are provided under AG ¶ 14. The following are potentially applicable:

(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 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 first viewed adult pornography between the ages of eight and ten. He was an adult when he first viewed child pornography in 2016 at age 21. He viewed child pornography on a regular basis between 2016 until he was arrested in July 2022. He was an adult during this entire period. AG ¶ 14(a) does not apply.

Applicant viewed child pornography on a regular basis for several years. He testified that his viewing of child pornography was compulsive and he was unable to stop. He did not stop downloading/viewing child pornography until he was arrested in July 2022. I cannot conclude that his viewing of child pornography is unlikely to recur.

His conduct was illegal and immoral and continues to raise doubts about his reliability, trustworthiness, and judgment. AG ¶ 14(b) does not apply. His past conduct also makes him vulnerable to coercion, exploitation, or duress. AG ¶ 14(c) does not apply.

AG ¶ 14(d) does not apply to the facts of this case. One cannot conclude the minor children involved in the pornographic films consented to what was being done to them. Applicant viewed these videos on a public internet site. He would share videos with other members of a group which at a maximum consisted of up to 50 members.

AG ¶ 14(e) does not apply. While Applicant is attending biblical counseling with Dr. R.F and Dr. S.F., they are not “qualified mental health professionals.” It is unclear whether Applicant’s behavior is readily controllable with treatment. He did not provide an evaluation from a “qualified mental health professional” who is an expert in the area of child pornography addiction.

Sexual Behavior security concerns are not mitigated.

### **Guideline J, Criminal Conduct**

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant’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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are applicable:

(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; and

(c) individual is currently on parole or probation.

In February 2023, Applicant was convicted of two counts of Felony Second Degree Sexual Exploitation of a Minor. He received a suspended sentence but was placed on probation until February 2027. He was also required to register as a sex offender for 30 years. AG ¶¶ 31(b) and 31(c) apply.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(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.

Neither mitigating condition applies. Applicant viewed child pornography on regular basis between 2016 and July 2022 when he was arrested. He admits that his conduct was compulsive. His conduct raises doubts about his reliability, trustworthiness, and judgment. Given his lengthy history of viewing child pornography, I cannot conclude that it is unlikely to recur. AG ¶ 32(a) does not apply. I cannot conclude there is evidence of successful rehabilitation. Applicant remains on probation until February 2027. It is too soon to conclude that he is fully rehabilitated. AG ¶ 32(d) does not apply.

The Criminal Conduct security concerns are not mitigated.

### **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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines D and J in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns under Guidelines D and J.

### **Formal Findings**

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

Paragraph 1, Guideline D:

Against Applicant



Subparagraphs 1.a-1.b: Against Applicant

Paragraph 2, Guideline J: Against Applicant

Subparagraph 2.a: Against Applicant

**Conclusion**

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Erin C. Hogan  
Administrative Judge