



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



In the matter of:)	
)	
)	ISCR Case No. 24-00003
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

12/16/2024

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Since 1974 to present Applicant has regularly viewed pornography to include during work hours on his personal computer. His spouse is not aware of his sexual behavior. His conduct raised security concerns under the guidelines for personal conduct and sexual behavior. Eligibility for access to classified information is denied.

Statement of the Case

On February 26, 2024, in accordance with Department of Defense (DoD Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines E and D. 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 April 1, 2024, and requested a requested a decision based on the administrative record. On August 14, 2024, the Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government’s file of

relevant material (FORM), including documents identified as items 1 through 4. Applicant received the FORM on August 26, 2024. He was given 30 days from receipt of the FORM to submit materials in response, and to object to the Government's evidence. Applicant did not submit a response. The case was assigned to me on December 9, 2024. The government items were marked as government exhibits (GE) 1 through 4 and are admitted without objection.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.g and 2.b, with clarification. He denied SOR ¶ 2.a. (GE 1) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 64-year-old employee of a defense contractor. He has been employed with the defense contractor since 2018. He has been married to his wife for 28 years. They have two adult children. (GE 2)

In December 2013, July 2014, and September 2016, Applicant underwent polygraph examinations related to possible employment with a government agency. Before and after the polygraph examinations, he made verbal statements to the examiner, who recorded and wrote his statements down in government records. The reports reflected he disclosed that was ashamed of his pornography viewing habits and he believed he was addicted to pornography, as alleged in SOR ¶¶ 1.d and 2.a. He viewed pornography at his home for approximately one hour per day for the purpose of masturbation, as alleged in SOR ¶¶ 1.a and 2.a. He viewed "rape" pornography approximately once per year as alleged in SOR ¶¶ 1.c and 2.a. He disclosed that since he started working from home, he viewed pornography one to two hours per week while on the clock, unbeknownst to his boss. He illegally downloaded approximately 500 pornographic movies, at the rate of two to three movies per week, without paying for them, as alleged in SOR ¶¶ 1.g and 2.a. As of the report of investigation dated October 23, 2018, and Applicant's amended subject interview dated September 9, 2021, Applicant continues to view pornography during work hours. His wife and family are still unaware of his activities related to pornography, as alleged in SOR ¶¶ 1.e and 2.a. (GE 3, GE 4)

Some of Applicant's disclosed sexual activity was criminal in nature. SOR ¶¶ 1.b and 2.a alleged that on multiple occasions, he viewed pornography of underage girls. In his 2013 statements to the polygraph examiners, he admitted to intentionally clicking on a link "within the past year" to view a nude girl he estimated to be age 14 "due to her small breasts and lack of pubic hair." He also discussed masturbating while viewing a video of another girl he believed to be between 15 and 17 years old. Additionally, as alleged in SOR ¶¶ 1.f and 2.a, he disclosed to the examiners that in the early 1980s, he paid prostitutes five times to engage in intercourse. In approximately 1985, he frequented local bars once a month and paid "bar girls" \$100 per visit for fondling and manual stimulation. He stopped visiting the bars for these services in the early 1990s because he met his wife. He has not paid to engage in any sexual activities since meeting his wife. (Answer; GE 4)

The record contains some inconsistencies which create doubts about his credibility. While Applicant disclosed viewing underage girls as recently as 2013, the report of investigation reflects that he “has never viewed or possessed any child pornography.” He clarified in his answers to interrogatories that “about 40 years ago, I did download video of underage girl[s], as soon as I found what the files contained, I deleted the files. I have not downloaded underage girls since.” In his Answer he claimed to have last viewed underage girls in the 1980s. He also claimed he deleted the pornographic copyrighted movies that he had downloaded. (GE 1; GE 3)

In Applicant’s amended subject interview dated September 9, 2021, Applicant also discussed head-butting his infant daughter when she was less than a year old as alleged in SOR ¶ 2.b. She was crying and woke him up. He claimed that he did not want to hurt her, he only wanted to quiet her. However, head-butting her caused her to cry harder. His wife did not know of this incident. His daughter is now an adult. (GE 3)

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

Over the past 50-years, Applicant has engaged in conduct that could affect his personal, professional, and community standing. He admits to viewing pornography on a regular basis to include during work hours and downloading approximately 500 copyrighted pornographic movies. Applicant paid money to receive sexual intercourse in the 1980s and paid money to receive other sexual stimulation monthly from 1985 to the early 1990s. He intentionally viewed pornographic images of underage girls at least twice. He also admitted to viewing rape pornography and downloading pornographic

movies without paying for them. He is ashamed of his self-diagnosed addiction to pornography and hides it from his wife, boss, and others in his personal life.

Similarly, the incident of head-butting his infant daughter could potentially affect his personal, professional, or community standing, and he has not disclosed the incident to his wife. As a result of all the above, he is vulnerable to exploitation, manipulation, and duress. The evidence is sufficient to raise this disqualifying condition.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all 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; and

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

Applicant remains vulnerable to coercion. He produced no evidence of counseling or positive steps that would alleviate the risks present from his conduct. He has a long history of engaging in questionable judgment and concealing activities from his wife. While he has not paid for sex acts since the early 1990s, he continues to engage in the questionable behavior of viewing pornography during work hours. His wife does not know of this activity. None of the above mitigating conditions fully apply to the Applicant's sexual conduct.

With respect to the incident in 1997 in which he headbutted his daughter, so much time has passed, the behavior only occurred once, and it happened under unique circumstances that it is unlikely to recur now that his daughter is an adult. It does not cast doubt on his current reliability, trustworthiness, or judgment. SOR ¶ 2.b is mitigated.

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. All are potentially applicable in this case:

- (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; and
- (d) sexual behavior of a public nature or that reflects lack of discretion or judgment.

With respect to the allegations in SOR ¶¶ 1.f (his choice to pay for intercourse in the 1980s and the manual stimulation he paid for into the early 1990s); and 1.b (his choice to view pornography depicting underage girls), his conduct is criminal. It also makes him vulnerable to coercion, exploitation, or duress and reflects a lack of discretion and judgment. AG ¶¶ 13(a), 13(c), and 13(d) apply to this conduct.

As explained in SOR ¶¶ 1.a, and 1.d, Applicant identifies himself as a pornography addict and admits he is ashamed of his viewing habits, to include viewing pornography during his work hours and pornography depicting underage girls. No one in his personal life knows of his pattern of compulsive pornography viewing, as admitted in his Answer to SOR ¶ 1.e. As a result, he is vulnerable to coercion, exploitation, or duress. His behavior also represents a pattern of high-risk sexual behavior that reflects a lack of discretion or judgment. AG ¶¶ 13(b), 13(c), and 13(d) apply to this conduct.

With respect to SOR ¶¶ 1.c (which alleges he viewed rape pornography) and 1.g (which alleges he illegally downloaded approximately 500 pornographic movies without paying for them) there is nothing in the record to support that these activities were illegal. However, inasmuch as they play a role in his compulsive viewing of pornography, vulnerability to coercion, and lack of discretion or judgment discussed above, AG ¶¶ 13(b), 13(c), and 13(d) apply to this conduct.

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

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

None of the above mitigating conditions fully apply. Applicant is 64 years old. He has a 50-year history of viewing pornography, to include at least a few images of minors. While his choice to pay for sex was about 30 years ago, it is part of his larger pattern of reckless behavior. Selecting and viewing explicit images of minors, who cannot consent, leaves him vulnerable to exploitation and reflects a lack of judgment. Additionally, he continues to view pornography during work hours. While viewing pornography (including rape pornography) is not illegal, viewing it during his workday shows questionable judgment that has not been mitigated. There is no evidence that future instances of this nature are unlikely to occur. His wife and boss do not know of his compulsion to view pornography, which makes him susceptible to coercion, exploitation, or duress.

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 considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and D in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant remains vulnerable to coercion. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the personal conduct and sexual behavior 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:	AGAINST APPLICANT
Subparagraphs 1.a to 1.g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer Goldstein
Administrative Judge