



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



In the matter of: )  
 )  
----- ) ISCR Case No. 03-21428  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 18, 2008

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**Decision**

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LOKEY-ANDERSON, Darlene D., Administrative Judge:

**History of Case**

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP) on November 9, 2005. On September 25, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 5, 2007, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 13, 2007. A notice of hearing was issued on November 16, 2007, scheduling the hearing for December 4, 2007. At the hearing the Government

presented five exhibits. The Applicant presented no exhibits, nor called any witnesses. He did testify on his own behalf. The official transcript (Tr.) was received on December 14, 2007.

### **Findings of Fact**

The Applicant is 62 years old and divorced. He has a Bachelors Degree in Math and Computer Science. He is employed by a defense contractor as a Software Engineer, and is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

#### Paragraph 1 (Guideline D - Sexual Behavior).

The Government alleges in this paragraph that the Applicant is ineligible for clearance because his sexual behavior involved a criminal offense, is indicative of a personality or emotional disorder, reflects lack of judgment or discretion, or may subject the individual to undue influence or coercion, or reflects lack of judgment or discretion.

The Applicant admits to each of the allegations set forth in the SOR under this guideline. He admits that he is a sexual pervert and believes that he is now on the road to recovery.

Since the age of fourteen, when he was introduced to this conduct by a junior high school friend, the Applicant has engaged in perverted sexual activity, at times illegal and/or immoral and offensive to others. From 1959, at fourteen years of age, until at least 2001, at the age of 56, the Applicant rubbed his penis, at times unexposed and other times fully exposed, on numerous occasions against unsuspecting female's buttocks. The Applicant explained that this was always a voluntary act on his part and he engaged in this conduct about once a month on average for excitement. He would go to crowded places and target women that he felt attracted to.

On one occasion, the Applicant was at a basketball game with his daughter when he began rubbing his penis on a woman in the crowd. He does not believe his daughter realized what he was doing.

In 1972, the Applicant began working for a defense contractor, and received his first security clearance in 1975. He has held a security clearance from the Department of Defense since then.

From 1965 to 1972, on numerous occasions, the Applicant has looked up women's dresses without their knowledge. Except for the period between 1968 and 1969 when the Applicant was drafted in the Army, he would crawl under cubicles in his college library to look between girl's legs at school.

In 1972, when the Applicant was no longer a student at that university, he returned to the school library to look up girl's dresses. On this occasion, he was arrested and charged with Trespassing, barred from the campus, and required to serve a probationary period. (See Government Exhibit 2).

From 1965 through at least 1972, the Applicant has masturbated and rubbed his penis in public places to arouse himself. The Applicant explained that he would sit next to a woman and use a book to rub his penis. On some occasions he would arouse himself to the point of ejaculation.

On numerous other occasions, the Applicant explained that after making eye contact with an attractive woman, he licks his lips in full view of an attractive woman because he finds it to be sexually arousing. He has continued this activity until at least 2004.

In the early 1990's, the Applicant was caught rubbing his unexposed penis against a woman at the craps table at a casino in Las Vegas, Nevada. He was detained by security and asked to leave and never return to the casino. The Applicant admitted that he engaged in this conduct on many other occasions and was not caught. He explained that he engaged in this conduct for the excitement of it all. (See Government Exhibit 2).

The Applicant was arrested on June 12, 1994, and charged with (1) Lewd or Lascivious Acts with a Child 14 or 15 years old, (2) Sexual Battery, and (3) Indecent Exposure. He testified that this conduct occurred as he was exiting a movie theater when he had first rubbed his exposed penis on a mother and then on her child. He explained that at that time, he was trying to get aroused. The Applicant was convicted of all three charges and sentenced to serve 60 days in jail (served during 29 1/2 weekends), pay restitution to the victim, undergo counseling and was placed on three years of supervised probation. (See Government Exhibits 3, 4 and 5). As set forth below, the Applicant violated the terms of this probation and was sentenced to serve 120 days in jail, which was stayed on three conditions: 1) the successful completion of counseling with a Clinical Psychologist, 2) that he keep a sponsor in the sexual counseling program, and 3) that he have no further violation.

A year later, and in violation of his earlier probation, on July 9, 1995, the Applicant was charged with (1) Sexual Battery, and (2) Disorderly Conduct. This time he was mingling in a crowd near some street performers and rubbed himself up against a woman. An undercover police officer arrested him. He was found guilty of Count 1 and sentenced to serve 30 days in the county jail, to serve 36 months on probation, pay \$100.00 restitution and was required to undergo counseling and attend 90 Sexual Compulsives Anonymous meetings within 120 days. Since 1997, the Applicant has been required to register as a Sexual Offender in the State of California. (See Government Exhibit 3).

Following his arrests in 1994, and 1995, the Applicant failed to report this adverse information to his company security officer. He waited until his five year security clearance update to disclose the information.

The Applicant testified that even though he is ashamed of this sexual misconduct, he would not jeopardize the country's security if someone tried to use the information against him. (Tr. p. 80). He stated that he is on the road to recovery from his sexual perversions. He now avoids crowded environments or public places.

The Applicant's daughters, family and business associates are unaware of his sexual perversions and criminal sexual activities and he does not want them to know about it. His daughter and grand daughter currently live with him. It is very stressful to the Applicant and he constantly worries that someone may find out that he is a registered sexual offender. (Tr. p. 85).

The Applicant was drafted into the Army during the Viet Nam war and served our country in the 25<sup>th</sup> Infantry Division for 22 months. He served in Viet Nam for one year. He received the Silver Star, a very prestigious award given only to those engaged in combat with the enemy.

### **Policies**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

#### (Guideline D (Sexual Behavior))

12. *The Concern.* Sexual Behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

#### Conditions that could raise a security concern:

13 (a) sexual behavior of a criminal nature, whether or not the individual was prosecuted;

13(b) a pattern of compulsive, self-destructive, or high risk sexual behavior that the person is unable to stop to that may be symptomatic of a personality disorder;

13(c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;

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

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the

whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . 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."

The Government must make out a case under Guideline D (Sexual Behavior) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

### **Analysis**

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's questionable sexual behavior has a direct and negative impact on his suitability for access to classified information.

The Applicant is an admitted sexual pervert who has engaged in inappropriate sexual behavior from 1959 to at least 2004. At times his conduct was criminal, as evidenced by his two arrests in 1994 and 1995. On numerous other occasions, his sexual misconduct was immoral and offensive. He is a registered sex offender. He has received counseling and psychiatric treatment for his sexual perversions. He believes that he is in recovery. However, he does not want anyone to know about his sexual perversions and has kept it a secret from his family, friends and coworkers. Following his arrests, he did not inform his company security officer of this adverse information. Considering this evidence in totality, this demonstrates a pattern of inappropriate sexual behavior and high risk conduct that was careless, lacked discretion and good judgment and could subject him to pressure, coercion and/or blackmail, which in turn could subject the Government to a security risk.

Th Applicant's high risk behavior places him in a vulnerable position to be susceptible to pressure, coercion and/or blackmail. He engaged in these activities after

having been granted a Security Clearance in 1975. His questionable judgment and lack of discretion occurred as recently as 2004, just three years ago. The Applicant states that since 2001, he has taken measures to prevent his impulsive or planned sexual perverted activities by avoiding crowded and public places. However, this pattern of high risk behavior is unacceptable while holding a security clearance and entrusted with the national secrets. The risk is great that he may fall prey to exploitation, coercion or duress. Under Guideline D, Disqualifying Conditions 13 (a), "sexual behavior of a criminal nature, whether or not the individual was prosecuted;" 13(b), "a pattern of compulsive, self-destructive, or high risk sexual behavior that the person is unable to stop to that may be symptomatic of a personality disorder;" 13(c), "sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;" and 13(d), "sexual behavior of a public nature and/or that reflects lack of discretion or judgment," apply. None of the mitigating conditions are even remotely applicable. The Applicant has not met his burden of demonstrating that his sexual behavior does not raise a security concern, and Guideline D is found against the Applicant.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline D of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline D.

### **Formal Findings**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

### **Conclusions**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

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Darlene Lokey-Anderson  
Administrative Judge