

KEYWORD: Sexual Behavior; Personal Conduct

DIGEST: Applicant is 42 years old and has been employed as a senior engineer for a defense contractor since July 2000. In 1993, while working overseas in the military, he sexually molested his 12-year-old stepdaughter on at least eight occasions during a three- to four-month period. When questioned about his sexually deviant behavior, he denied the allegations. He deliberately falsified material facts in two different security clearance applications. In 2003, he lost access to Sensitive Compartment Information as a result of the molestation incident. Applicant has not mitigated the sexual behavior and personal conduct security concerns. Clearance is denied.

CASENO: 04-07057.h1

DATE: 04/30/2007

DATE: April 30, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 04-07057
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

SYNOPSIS

Applicant is 42 years old and has been employed as a senior engineer for a defense contractor since July 2000. In 1993, while working overseas in the military, he sexually molested his 12-year-old stepdaughter on at least eight occasions during a three- to four-month period. When questioned about his sexually deviant behavior, he denied the allegations. He deliberately falsified material facts in two different security clearance applications. In 2003, he lost access to Sensitive Compartment Information as a result of the molestation incident. Applicant has not mitigated the sexual behavior and personal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

On April 16, 2002, Applicant executed a Security Clearance Application (SF 86).¹ On July 12, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline D (Sexual Behavior) and Guideline E (Personal Conduct) 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 Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted or revoked.

By letter dated December 6, 2005, Applicant responded to the SOR allegations and requested a hearing on the written record in lieu of a hearing. On October 18, 2006, he elected to have an in-person hearing. The case was assigned to me on January 24, 2007. On February 5, 2007, Applicant's attorney filed a Notice of Appearance. A Notice of Hearing was issued on February 16, 2007, scheduling the hearing for March 8, 2007. The hearing was conducted as scheduled. At the hearing, the Government offered four exhibits, Exs. 1-4. Applicant offered five exhibits, Exs. A-E. All exhibits were admitted into the record without objection. The transcript (Tr.) was received on March 19, 2007.

FINDINGS OF FACT

Applicant admitted the allegation under Guideline D, sexual behavior, subparagraph 1.a. Applicant's admission to the allegation in the SOR is incorporated herein. He denied the other allegations. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 42 years old and, since July 2000, has been a senior engineer for a defense contractor.² He served in the U.S. Army from August 1982 to June 1998, and retired with an honorable discharge as a staff sergeant (E-6).³ While on active duty, he was awarded a Meritorious Service Medal, and five Army Commendation Medals.⁴ He currently has a Top Secret Clearance.⁵

Applicant was married in June 1990. He has five adult children: two stepdaughters, a stepson, and two biological daughters with his wife. He was divorced in October 2006.

¹Ex. 2 (Security Clearance Application, dated April 16, 2002); *See also* Ex. 1 (Security Clearance Application, dated June 19, 1997).

²Tr. 18.

³Tr. 19-21.

⁴Tr. 28.

⁵Tr. 40.

In 1993, while stationed overseas, Applicant was accused of fondling and inappropriately touching his 12-year-old stepdaughter on her breasts, buttocks, and vagina, for sexual gratification. This inappropriate behavior occurred approximately eight times, over a three- to four-month period. At the time, his stepdaughter told her 10-year-old brother.⁶ She then told her teacher, and the teacher informed their mother about the incident.

The Criminal Investigator Division (CID) of the Army questioned Applicant's stepdaughter and wife about the molestation allegations. Applicant testified that when questioned, his wife and daughter recanted their allegations.⁷ After CID investigated, Applicant and his family were advised to attend counseling regarding the sexual molestation matter. They attended approximately four, one-hour sessions.

Applicant further testified that his commanding officer questioned him about the molestation incident:

Q: And you initially denied this [molestation allegation] to your commander?

A: I did, to protect my children.

Q: How is it that denying this would protect your children?

A: My family is very important to me, and at that time we, you know, we had made the decision to put this past us and move on.

Q: Did you later admit this to your commander?

A: No I did not.

Q: Why not?

A: I don't know.⁸

In Applicant's SF 86, executed on June 19, 1997, he replied "no" to question 19 (*Your medical Record In the last 7 years, have you consulted a mental health professional (psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health related condition*). He failed to list that he attended counseling at the Family Services Center regarding the sexual molestation charge. He indicated that "[t]he omission of the Counseling session was in no way an attempt to hide the counseling session."⁹ He testified that he did not list the family counseling because "I didn't believe that was relevant."¹⁰ He recalled that there were approximately four, one-hour counseling sessions, attended by himself, his wife, and stepdaughter.¹¹

In response to question 9 on the 1997 SF 86 (*Your Relatives and Associates Entry List Options: 1. Mother 2. Father 3. Stepmother 4. Stepfather 5. Foster parent 6. Child (adopted also)*)

⁶Tr. 56.

⁷Tr. 41.

⁸Tr. 33.

⁹See Applicant's letter, dated December 6, 2005.

¹⁰Tr. 26.

¹¹Tr. 35.

7. Stepchild 8. Brother 9. Sister 10. Stepbrother 11. Stepsister 12. Half-brother 13. Half-sister 14. Father-in-law 15. Mother-in-law 16. Guardian 17. Other relative 18. Associate 19. Adult Currently Living with you 1) Include only foreign national relatives not listed in 1-16 with whom you or your spouse are bound by affection, obligation or close and continuing contact. 2) Include only foreign national associates with whom your [sic] or your spouse are bound by affection, obligation or close and continuing contact.”) he listed his mother, father, brother, and sister. He failed to list his two daughters, two stepdaughters, and stepson. He indicated that failure to list his children was not intentional.

In a subsequent SF 86 electronically submitted on April 9, 2002, in response to question 9 (same question as the 1997 SF 86), he listed his mother, father, and sister. He failed to list his two daughters, his two stepdaughters, his stepson, and his brother. He indicated that failure to list his children was not intentional.

Applicant had a polygraph examination in April 2003, where he fully disclosed and admitted the allegations regarding molesting his stepdaughter.¹² Applicant’s security clearance and access to Sensitive Compartment Information (SCI) were denied by another Government Agency, on April 9, 2003, as a result of his molestation of his 12-year-old stepdaughter in about 1993. Applicant further testified that after the polygraph, he had a family meeting and disclosed the sexual molestation incident to the entire family.¹³ Applicant contends that the CID did not question him about the molestation. He stated:

I understand that I was to blame for the entire incident and would have been punished if questioned by Military Police or CID. Looking back at my decision to disclose this information to the polygraph examiner was entirely voluntary but as of this hearing may prove to be the reason why I lose my clearance. Any Military Police (MP) or Central Intelligence Division (CID) had not questioned me regarding this incident prior to the NSA Polygraph examiner.¹⁴

As a civilian, Applicant stated that he received multiple commendations from the Department of Energy and the Department of Defense for his engineering contributions to certain programs.¹⁵ He has received recognition from the Federal Bureau of Investigation for “implementing their security systems and employing their hardware and troubleshooting their networks to maintain the level of protection that they require.”¹⁶ He was also recognized by two foreign governments for his expertise in engineering.¹⁷

¹²See Applicant’s letter, dated December 6, 2005.

¹³Tr. 57.

¹⁴See Applicant’s letter, dated December 6, 2005.

¹⁵Tr. 28.

¹⁶Tr. 29.

¹⁷Tr. 29.

Applicant has coached his daughters' sporting teams for approximately five years. He stopped coaching when "they moved to a travel group, so therefore they moved up to an upper level coach, so it was no longer intermural or anything else."¹⁸

Applicant proffered five letters of recommendation from his supervisors and coworkers. He stated that they knew about the underlying molestation issue.¹⁹ None of the letters mention the molestation issue. Each letter recounts meeting Applicant in July 2000 while at work and hold him in high regard. One letter indicated that: "[Applicant] has been a stellar performer here from the very beginning of his employment."²⁰ Another letter stated: "I can state without reservation that [Applicant] is one of the most trustworthy, professional, and dedicated members I have ever worked with at my nine years at [place of employment]."²¹ Applicant was held in high esteem by his coworkers.²²

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.²³ The Government has the burden of proving controverted facts.²⁴ The burden of proof is something less than a

¹⁸Tr. 29.

¹⁹Ex. A (Letter of Recommendation, dated February 19, 2007); Ex. B (Letter of Recommendation, dated February 19, 2007); Ex. C (Letter of Recommendation, dated February 16, 2007); Ex. D (Letter of Recommendation, dated February 19, 2007), Ex. E (Letter of Recommendation, dated February 13, 2007).

²⁰Ex. A, *supra*, note 19.

²¹Ex. B, *supra*, note 19.

²²Exs. A through E, *supra*, note 19.

²³ISCR Case No. 96-0277 (July 11, 1997) at 2.

²⁴ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

preponderance of evidence.²⁵ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.²⁶ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁷

No one has a right to a security clearance²⁸ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁰ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.³¹ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Sexual Behavior

Sexual behavior is a security concern if it involves a criminal offense, indicates a personality or emotional disorder, may subject the individual to coercion, exploitation, or duress or reflects lack of judgment or discretion. The Government has established a *prima facie* case for disqualification under Guideline D, sexual behavior.

Applicant is a sexual predator. He admitted fondling and inappropriately touching his 12-year-old stepdaughter on her breasts, buttocks and vagina, for his sexual gratification. This inappropriate behavior occurred approximately eight times in a three- to four-month period in about 1993. Moreover, CID investigated the incidents shortly after it was reported in 1993. He contends that his family recanted their charges, and he, his wife, and daughter were ordered to go to family counseling. He denied the allegations when questioned by his commanding officer. Moreover, he contends that neither the CID nor military police questioned him about the accusations. Because of his actions toward his

²⁵*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²⁶ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

²⁷ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

²⁸*Egan*, 484 U.S. at 531.

²⁹*Id.*

³⁰*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

³¹Executive Order 10865 § 7.

stepdaughter, Sexual Behavior Disqualifying Conditions (SB DC) E2.A4.1.2.1 (*sexual behavior of a criminal nature, whether or not the individual has been prosecuted*), SB DC E2.A4.1.2.2 (*compulsive or addictive sexual behavior when the person is unable to stop a pattern of self-destructive or high-risk behavior or that which is symptomatic of a personality disorder*), and SB DC E2.A4.1.2.3 (*sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress*) apply.

Various factors can mitigate sexual behavior security concerns. Sexual abuse of a child is regarded very negatively in our society and is a cowardly act. Here, if an individual became aware of Applicant's sexual exploitation of a child, that information could be used to pressure the Applicant to do things that were not in the interest of the U.S. government. Obviously, his sexual molestation of a minor child reflects a lack of discretion or judgment. The sexual molestation charge at issue, however, was not recent. It occurred more than 13 years ago. There is no evidence of child molestation subsequent to 1993. Thus, Sexual Behavior Mitigating Condition E2.A4.1.3.2 (*the behavior was not recent and there is no evidence of subsequent conduct of a similar nature*) applies. However, because of the embarrassing nature of this incident, together with the fact that he actively concealed this heinous act until 2003, continues to make Applicant vulnerable to coercion, exploitation, and duress, by someone who could use this incident to have an advantage over Applicant. Applicant has divulged his inappropriate sexual behavior to a limited number of select people. Thus, none of the other Sexual Behavior Mitigating Conditions apply. Applicant has not mitigated the Government's case. Accordingly, allegations 1.a and 1.b of the SOR are concluded against Applicant.

Personal Conduct

Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. The Government has established a *prima facie* case for disqualification under Guideline E, personal conduct.

When questioned in 1993 by his commanding officer about the sexual molestation of his 12-year-old stepdaughter, Applicant denied the allegations. His wife and stepdaughter recanted their allegations. Applicant, his wife and daughter attended family counseling. However, he failed to indicate the family counseling activity on his SF 86. Moreover, in SF 86s executed in 1997 and 2002, he failed to list any of his five children. I conclude Applicant deliberately falsified questions in both SF 86s. Additionally, his access to SCI was denied on April 9, 2003, as a result of the sexual molestation charges. For more than 10 years, from 1993 when the incident occurred to 2003 when he finally acknowledged his egregious behavior, he has lied about material facts. The truth could have destroyed his military career. Rather than deal with the consequences, he has lived his life with the hope that his secrets would remain just that. Thus, Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.1 (*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*), PC DC E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*), PC DC E2.A5.1.2.3 (*deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official representative in connection with a personnel security or trustworthiness determination*), PC DC E2.A5.1.2.4 (*personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's*

personal, professional, or community standing or render the person susceptible to blackmail), and PC DC E2.A5.1.2.5 (a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency) apply.

Various factors can mitigate personal conduct security concerns. Honesty is critical to a position of trust in safeguarding classified information. The individual is obligated to come forward and self-report any security violation. Beginning in 1993, Applicant committed a number of falsifications. He denied the sexual molestation allegations initially to his commanding officer. Moreover, it was not until the polygraph examination in 2003 that Applicant fully divulged this information as part of security clearance investigation process. Thus, Personal Conduct Mitigating Conditions (PC MC) E2.A5.1.3.1 (*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*), PC MC E2.A5.1.3.2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), and PC MC E2.A5.1.3.3 (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) do not apply. Applicant has not mitigated the Government's case. Accordingly, allegations 2.a through 2.f of the SOR are concluded against Applicant.

I have considered all the evidence in the case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. At the hearing, Applicant appeared composed, contrite, and remorseful for his sexual advances toward his 12-year-old stepdaughter. He was a sexual predator, and he molested his stepdaughter. Once the family reported his behavior, he lied to his commanding officer and denied the allegations. He deliberately falsified material facts in two different SF 86s, by omitting all of his children, hoping that if an investigation occurred, his children would not be interviewed. Moreover, he lost access to SCI, which is a further indication that he is not trustworthy or reliable. For the reasons stated, I conclude Applicant is not suitable for access to classified information.

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 (Sexual Behavior):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2. Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant

Subparagraph 2.e:
Subparagraph 2.f:

Against Applicant
Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Jacqueline T. Williams
Administrative Judge