

KEYWORD: Sexual Behavior; Personal Conduct

DIGEST: Applicant is a 27-year-old employee of a defense contractor. Applicant became obsessed with pornography and masturbation. He viewed pornography and masturbated at his workplace. Applicant received religious-based counseling and claims to be cured of his pornography "addiction." Applicant has not mitigated the security concerns based on his sexual behavior. Clearance is denied.

CASENO: 06-17237.h1

DATE: 07/20/2007

DATE: July 20, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-17237
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
EDWARD W. LOUGHRAN**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 27-year-old employee of a defense contractor. Applicant became obsessed with pornography and masturbation. He viewed pornography and masturbated at his workplace. Applicant received religious-based counseling and claims to be cured of his pornography “addiction.” Applicant has not mitigated the security concerns based on his sexual behavior. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 15, 2007, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline D (Sexual Behavior) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing in an undated response, and elected to have a hearing before an administrative judge. The case was assigned to me on May 24, 2007. A Notice of Hearing was issued on June 7, 2007, scheduling the hearing for June 28, 2007. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered two exhibits that were marked as Government Exhibits (GE) 1 and 2, and admitted without objections. Applicant testified and offered one exhibit that was marked Applicant Exhibit (AE) A, and admitted without objection. DOHA received the hearing transcript (Tr.) on July 10, 2007.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 27-year-old employee of a defense contractor. He is single with no children. He holds a bachelor of science degree.²

Applicant started viewing sexually explicit material, commonly referred to as pornography, on the internet in about 1993, at the age of 13. While in high school, Applicant viewed pornography over the internet several times per week. By the time he turned 18, Applicant realized that his viewing pornography was probably an addiction. Applicant was never diagnosed as addicted to pornography. His belief that he was addicted arose through self-evaluation.³

When Applicant attended college, his pornography viewing increased. The college had high speed internet connections which made it easier to access the pornography, especially the video files. Applicant believes he viewed pornography on a daily basis. Applicant attended several colleges before he graduated. When he was not living at college, Applicant stayed at his parent's house. His

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

²Tr. at 56-57; GE 1.

³Tr. at 59; Applicant's response to SOR; GE 2 at 1-2.

parents also had high speed internet. Applicant had a computer in his room, which made it easy to satisfy his pornography habit.⁴

Applicant was employed by a company from 2000 to 2003. Applicant viewed sexually explicit material while working for this company, using their computer. He stated he did this when he was alone or when no one was in the area. On about ten occasions, Applicant stimulated his penis over his clothes with his hand, his arm, or by rubbing against his desk. He stated this would only last a few seconds, and he never stimulated himself to ejaculation. He masturbated in the men's restroom on about five occasions.⁵

Applicant stated that between about mid-2000 and 2003, his interests in pornography began to change. He had always been interested in the control aspect of sexually explicit videos. He began to seek out "dominance" videos, and specifically videos involving "rape" scenes. He believes that most of the rape videos were staged with actors and actresses. He believes he may have on one or two occasions viewed videos of actual rapes. He did not purposely attempt to find real rape scenes, as the thought of watching a real rape "freaks [him] out."⁶ While searching the internet for pornography, Applicant inadvertently downloaded what appeared to be child pornography on two occasions.⁷

Applicant accessed pornographic web sites through various means. He obtained passwords through a web site which provided free passwords to other sites. He also engaged in "web-spoofing," which is falsely mimicking one web site to gain access to another web site. Through these means, Applicant was able to access pornographic web sites which required a fee, without paying the fee. Applicant last used either of these methods in about February 2005.⁸

Applicant received counseling with several individuals between 2000 and 2003, for Attention Deficit Disorder (ADD), Obsessive-Compulsive Disorder (OCD), his addiction to pornography, and compulsive masturbation. Applicant feels the counseling did not help his pornography and masturbation issues. Applicant and his counselor both agreed that pornography was wrong, but the counselor did not believe there was anything inherently wrong with masturbation. Masturbation is against Applicant's religious beliefs, and he felt this fundamental difference in beliefs prevented the counseling from succeeding in the areas of pornography and masturbation.⁹

Applicant worked for a friend who owned a tech company for about a month in May 2004.

⁴GE 2 at 2.

⁵Tr. at 37-39, 50-51; Applicant's response to SOR; GE 2 at 7-8.

⁶GE 2 at 3.

⁷*Id.*

⁸Tr. at 47-49; Applicant's response to SOR; GE 2 at 9-10.

⁹Tr. at 41-42; Applicant's response to SOR; GE 2 at 7.

Applicant was working late one evening at the company's one room office. No one else was working that night. Applicant viewed pornography over the internet using his computer and the company's network. He masturbated as he viewed the pornography. While he believed no one else was working that night, Applicant admitted that if someone walked in, that he would have been in plain view.¹⁰

In about 2004, Applicant and his friend who owned the tech company, drove around searching for businesses not adequately protecting their data. The friend had a laptop computer with a wireless networking card. Applicant's friend operated the computer. The friend thought if he was able to access a business' data, then he could approach the business, show them that their network was not secure, and attempt to generate business for his company. They found an open network at a store, and looked inside the network and viewed credit card information. Applicant did not save the information, nor did he release it or use it for any purpose. To the best of his knowledge, his friend also did not save the data or do anything with it.¹¹

In about mid-2005, Applicant masturbated while driving his car on a major freeway. Applicant stated he "did not ejaculate because [he] was concerned someone could see [him] and it was unsafe."¹²

Applicant was denied a Top Secret clearance by what is referred to as "Another Government Agency" in about August 2005. Applicant believes the denial of his clearance was a catalyst for him to change his life, but he stated it was his religious beliefs which enabled him to change.¹³

Applicant entered faith-based counseling for his pornography and masturbation in about October 2005. It started with individual meetings with his pastor, and grew into group meetings with three other men with similar issues. The group conducted a 60-day course going through a religious-based workbook, and ended in about January or February 2006. Applicant testified he viewed pornography about once or twice during this period, and possibly once shortly after it ended.¹⁴

In about July 2006, Applicant accessed web sites which contained pictures of partially clothed women on about five occasions. Applicant stated he unintentionally viewed a naked woman, and on another occasion, a naked man. Applicant was working for his current employer at the time, and accessed the web sites with a government computer. Applicant stated he felt he was heading down the same path as before, and stopped accessing the sites.¹⁵

Applicant testified he has not viewed pornography, nor masturbated in an inappropriate place since the incidents discussed above. Applicant believes through his counseling and renewed religious

¹⁰Tr. at 39-40, 51-53; Applicant's response to SOR; GE 2 at 5, 7.

¹¹Tr. at 32-34; Applicant's response to SOR; GE 2 at 10-11.

¹²Tr. at 41; Applicant's response to SOR; GE 2 at 7-8.

¹³Tr. at 45; Applicant's response to SOR; GE 2 at 4.

¹⁴Tr. at 42-45; Applicant's response to SOR; GE 2 at 8-9.

¹⁵Tr. at 52-55; Applicant's response to SOR; GE 2 at 6.

believes that he is cured of his self-described addiction to pornography and masturbation.¹⁶ In his statement to an investigator on November 7, 2006, Applicant wrote:

I do not have the intentions of viewing sexually explicit material in the workplace or masturbate at any place of employment in the future; however, I cannot state definitively that I won't do these things again in the future. I cannot predict the future. It is like that I have no intention of getting in an accident while driving home, but I can't control if in fact I get in an accident. I don't intend to do this activity at a workplace in the future or anywhere. I don't want to and I can make the commitment that to the best of my ability, I will not.¹⁷

Applicant has informed many people, including family, friends, and associates about his issues with pornography and masturbation. Applicant testified that he could not be coerced or blackmailed by his actions because he is no longer addicted to pornography, and that if blackmailed, he would reveal his actions as a way of sharing what God has accomplished.¹⁸

While working at a defense contractor between September 2005 and September 2006, Applicant downloaded a video game to a government-owned computer. Applicant usually played the game after work hours, but he also played it several times on company time. Applicant testified that “[i]t’s generally company policy that during work hours, no, you don’t do that.”¹⁹ No independent evidence was presented that this was against company policy. Applicant stated that he provided technical support, and that probably 50% of his job was down time. He eventually removed the video game from the computer.²⁰

Applicant submitted a letter from his assistant pastor. The pastor believes Applicant is trustworthy, conscientious, and a man of his word. He believes Applicant has genuine regret over past decisions he made about pornography, but that Applicant “does not carry guilt over his past decisions, but has moved from guilt into genuine behavior change.”²¹

Applicant’s called a witness on his behalf. The witness is the father of two young women that Applicant is friends with. Applicant shared with the witness that he had issues with pornography. The witness took a mentor role with Applicant. He believes Applicant is very conscientious, with

¹⁶Tr. at 56, 59-60; GE 2 at 4.

¹⁷GE 2 at 12.

¹⁸Tr. at 49-50.

¹⁹Tr. at 35.

²⁰Tr. at 34-36, 45-47; Applicant’s response to SOR; GE 2 at 4.

²¹AE A.

great remorse for his actions. He feels Applicant has greatly matured and that he is a diligent worker, honest, truthful, and dependable.²²

POLICIES

“[N]o one has a ‘right’ to a security clearance.”²³ As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”²⁴ The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”²⁵ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.²⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁷ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. 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.²⁸

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each 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 adjudicative process factors listed in the Directive and AG ¶ 2(a).

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions section below.

CONCLUSIONS

²²Tr. at 19-28.

²³*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁴*Id.* at 527.

²⁵Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

²⁶ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁷*Id.*; Directive, ¶ E2.2.2.

²⁸Exec. Or. 10865 § 7.

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline D: Sexual Behavior

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.

Applicant was obsessed with sexually explicit material, what is commonly referred to as pornography, and masturbation. He regularly viewed pornography over the internet. He masturbated in inappropriate and public places. Based on all the evidence, Sexual Behavior Disqualifying Condition (SB DC) 13(b) (*a pattern of compulsive, self-destructive, or high risk sexual behavior that the person is unable to stop or that may be symptomatic of a personality disorder*), SB DC 13(c) (*sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress*), and SB DC 13(d) (*sexual behavior of a public nature and/or that reflects lack of discretion or judgment*) apply in this case.

Applicant sought counseling for his issues with pornography and masturbation. Seeking counseling for these issues is a positive development. I do not find that Applicant's counseling supports the application of any disqualifying condition. SOR ¶¶ 1.i, and 1.j, are concluded for Applicant.

I considered all the Sexual Behavior Mitigating Conditions (SB MC), and especially considered SB MC 14(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 good judgment*), SB MC 14(c) (*the behavior no longer serves as a basis for coercion, exploitation, or duress*), and SB MC 14(d) (*the sexual behavior is strictly private, consensual, and discreet*).

Applicant viewed pornography at work, and masturbated in inappropriate and public places. SB MC 14(d) does not apply. Applicant last masturbated in an inappropriate place about two years ago. It has been about 18 months since he accessed pornographic web sites. Applicant received religious-based counseling and now believes he is cured of his addiction. However, Applicant accessed web sites which contained pictures of partially clothed women on about five occasions after his counseling, in about July 2006. I do not find that sufficient time has elapsed to support the application of SB MC 14(b). Applicant has informed many people of his involvement with pornography and masturbation. He testified that he could not be coerced or exploited because he would be willing to reveal his past as a way of sharing what God has accomplished. Applicant has lessened the possibility of coercion, exploitation, or duress. SB MC 14(c) is at least partially applicable.

Guideline E: Personal Conduct

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

SOR ¶ 2.a alleges that Applicant "was denied a Top Secret clearance by Another Government Agency in approximately September 2005." This is a true statement, but it is not an incident of questionable conduct on Applicant's part. It reflects another agency's evaluation of Applicant's conduct. It raises no independent personal conduct concerns. SOR ¶ 2.a is resolved in Applicant's favor.

Applicant downloaded a video game onto a government computer and played it after hours and during down periods at work. Applicant and his friend searched for and found an open network at a store, and looked inside the network and viewed credit card information. Applicant used questionable means to access pornographic web sites without paying for them.

The above actions raise Personal Conduct Disqualifying Conditions (PC DC) 16(c) (*credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information*), PC DC 16(d) (*credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of propriety information, unauthorized release of sensitive corporate or other government protected information; . . . (3) a pattern of dishonesty or rule violations; (4) evidence of significant misuse of Government or other employer's time or resources*), and PC DC 16(e) (*personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing . . .*).

I have considered all the Personal Conduct Mitigating Conditions (PC MC) and I especially considered PC MC 17(c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*), PC MC 17(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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*), and PC MC 17(e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*).

Applicant only played the video game on his own time or during down time at work. He removed the video game from his government computer some time ago. The incident when Applicant and his friend accessed personal information was a one-time event. It was initiated by the friend and there is no evidence the personal information was ever used. He has not used questionable means to access pornographic web sites without paying for them in more than two years. PC MC 17(c), PC MC 17(d), and PC MC 17(e) are applicable.

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a). I have also considered all the evidence, and every finding of fact and conclusion discussed above.

Applicant developed a very unhealthy obsession with pornography and masturbation. This led to inappropriate actions at the workplace, and on the highway. His search for pornography and "rape" videos resulted in inadvertently accessing child pornography, and what may have been an actual rape. Applicant's actions greatly increased his vulnerability to pressure, coercion, exploitation, and duress. Applicant's turning to religion to help him purge himself of these obsessions is commendable. I am concerned by his failure in his statement to unequivocally commit that he would not view pornography or masturbate in the workplace again. He equated accessing pornography and masturbating at work to having a car accident. The analogy is incorrect. An accident is an unintentional event. Masturbating in the workplace is intentional conduct.

Applicant appears to be on the right track. His witness and his pastor spoke very highly of him. At this point it is still too early to tell if Applicant's obsession with pornography and masturbation are the manifestations of a personality or emotional disorder, which will reveal itself again. I am obligated to resolve my doubt in favor of protecting classified information.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the personal conduct concerns, but has not mitigated the security concerns based on his sexual behavior.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline D: AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.I:	For Applicant
Subparagraph 1.j:	For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant

DECISION

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 or continue a security clearance for Applicant. Clearance is denied.

Edward W. Loughran
Administrative Judge