DATE: December 28, 2007

In Re:	)	
	)	
----------	)	ISCR Case No. 06-19544
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

DECISION OF ADMINISTRATIVE JUDGE
JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT
Ray T. Blank, Jr., Esquire, Department Counsel

FOR APPLICANT
Mark S. Zaid, Esquire
Brad Moss, Esquire

SYNOPSIS

Applicant's demonstrated misuse of information technology systems and sexual behavior disqualify him for a security clearance. The record did not establish conduct cognizable under Guideline E: Personal Conduct. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 29 May 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of personal conduct, misuse of information technology systems, and sexual behavior.[1] Applicant answered the SOR 19 July 2007 and requested a hearing. DOHA assigned the case to me 29 August 2007, and I convened a hearing 9 October 2007. DOHA received the transcript 17 October 2007.

PROCEDURAL ISSUES

At hearing, I denied Applicant's motion to amend the SOR, which was for all practical purposes a motion for summary judgment (Tr. 10-20).

FINDINGS OF FACT

Applicant admitted the allegations of the SOR. Accordingly, I incorporate his admissions as findings of fact. He is a 62-year-old senior engineer employed by a defense contractor since fall 2003. He seeks to retain the clearances he has held in the military and industry since approximately 1968. He also seeks reinstatement of his eligibility for access to special compartmented information (SCI). His access to SCI was revoked by another government agency in September 2003 because of his problems with accessing pornographic websites on government and company computers. He is a 1967 graduate of a U.S. military academy, and served over 25 years on active duty, reaching paygrade O-5.

Applicant has been a self-described, and now-diagnosed, pornography addict since about 1959, when he was age 14. His addiction has manifested itself in a variety of ways over nearly 50 years, and has evolved with the technology of pornography. From 1960 to 2002, he masturbated in public places— ranging from his automobile, to his locked office, to locked bathroom stalls at work or in gas stations, to hotel rooms while on temporary duty—after viewing pornography. From 1969 to 1978, he used the services of prostitutes 30-50 times. Between 1970 and 1977, he had extramarital affairs before and after his 1973 separation from his first wife, but none since his 1977 divorce and 1978 remarriage.

From 1977 to 2002, Applicant took time off from work to go to adult bookstores and movies, although he always used vacation time to make up the time lost from work. From June 1998 to January 2003, and again in June 2004, he used his government/company-provided laptop and desktop computers to view pornography for several minutes to several hours at a time, despite knowing that both government and company policies prohibited such use.

In August 1998, he received a code of conduct letter from another government agency concerning his misuse of government computers in viewing pornographic material, while holding a TS/SCI clearance. Yet, he continued to do it because he could not control his urges. When his clearances and access came up for periodic reinvestigation in 2001, Applicant disclosed this continued misuse of government/ company computers, and his SCI access was revoked in September 2003. Although Applicant claims that the June 2004 incident was caused by his mistakenly using

[1]Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).

his company laptop, rather than his personal laptop, to view pornography, the company nevertheless issued him a warning letter (A.E. B) promising stern disciplinary action if the problem recurred.

Applicant has tried on his own, and with professional help, to deal with his addiction, without complete success. In September 2000, he sought counseling with a licensed professional counselor who had given a presentation at Applicant's church. Applicant saw the counselor about 20 times, initially weekly, but tapering off to every other month. The counselor stated that the sessions involved only counseling, not diagnosis or prognosis. Applicant sought "assistance in dealing with having a wife and eight children. He wanted to be proactive and maintain control in all aspects of his personal life." There was no discussion of Applicant's pornography addiction. The counseling ended in May 2001 by mutual agreement (G.E. 4).

In addition, Applicant began attending Sexaholics Anonymous (SA) in 2001, and continues attending, although the record is not clear on how consistent he has been in his attendance over time. SA is one of a number of programs dealing with various forms of addiction that have adopted the Alcoholics Anonymous (AA) model for recovery from those addictions, including 12-step programs, sponsorship, and different kinds of support meetings.

In October 2003, Applicant sought additional counseling for his addiction, and elicited a report back to his employer in February 2004 (A.E. A):

> [Applicant] contacted me for his first appointment on October 3, 2003. He was referred to me because of my specialty in working with addictions. **I have never worked with anyone more serious in managing their goal of abstinence. He fully understands the negative consequences of continuing in his addiction. He has an excellent plan for abstinence which includes the support of a 12 step group and regular counseling with me**. . . I have high confidence that he will be successful with his goal of total abstinence [my emphasis].

Unfortunately, the record contains no further evidence of the extent of the counseling, or progress made by Applicant. However, the record is clear that Applicant was not successful in reaching his goal of abstinence.

In August 2006, Applicant again sought professional counseling, this time with a certified sexual addiction therapist. At the time, he had not been to an SA meeting in six months. Like the counselor in 2003, she also endorses the SA/AA model for treatment and recovery. However, she does not think it necessary to obtain prior treatment records, and did not do so in this case because she believed what Applicant was telling her. She requires her patients to meet with her individually, attend 12-step meetings, obtain a sponsor, and begin to work the 12 steps. She subscribes to the disease-concept of addiction, and consequently espouses total abstinence for her clients.

The therapist found that Applicant performed far better than her typical client, because he came to her program not in denial that he had a problem. Typically, overcoming a client's denial of a problem is the first, and greatest, barrier to recovery. By March 2007, she concluded that Applicant no longer required individual sessions, and they ceased by mutual agreement. She was aware at the

time that Applicant had experienced what she characterized as "slips"—which she analogized to an alcoholic taking a drink one day, but going back to the program of abstinence the next. She distinguished a "slip" from a "relapse," which she described as leaving the program, stopping attending meetings, telling their therapist they are done with treatment. She opined that a patient might go through several relapses before seeking new treatment. However, she gave inconsistent descriptions of what constituted "long term sobriety," variously stating 6-7 months (Tr. 71) then three months (Tr. 72), which she used as part of her basis for concluding that Applicant no longer required individual therapy. She considered Applicant to be at low risk of relapse as long as he continued to attend SA, continued to work with his sponsor, and continued to work his step program.

At hearing, Applicant described his current situation. He last viewed pornographic websites on his home computer in September 2007, 16 days before the hearing, for between 30 and 90 minutes. He estimates that he has visited pornographic websites about 20 times since he last saw his therapist in March 2007, typically for 30 to 90 minutes. He states that these viewings come in spurts, where he goes for some period of time without viewing, then viewing for several consecutive days. In this fashion, he might go two months without viewing pornography, and three months without masturbating in response to the viewing. Stress at work and at home are the usual triggers for his activity. He states that he no longer masturbates in public places, and last took time from work to go view pornography in 2002. Six months is the longest he has ever gone without viewing pornography. He knows his pornography viewing is absolutely inconsistent with his religious beliefs, and contributes to stress in his relationship with his wife.

Applicant no longer has a sponsor in SA, but meets regularly with a four-person book study group, that he feels fulfills the same purpose. He goes to SA meetings weekly, and is doing step work with steps 4, 5, and 6. He intends to continue going to SA. He states that his wife, his six oldest children, and a smattering of neighborhood, church, and work friends are aware of his addiction. He thinks his wife is aware of his continued viewing of pornography. Only his two youngest children, ages 14 and 9, are unaware of his issues.

Applicant's character references (A.E. A), only some of whom are familiar with his pornography addiction, consider him honest and trustworthy, and suitable for access to classified information. The chief operating officer (COO), president and chief executive officer (CEO), and facility security officer (FSO) all testified to Applicant's honesty and trustworthiness. Each is aware of Applicant's addiction to pornography, as well as the monitoring software the company had placed on Applicant's computer at work. The COO testified that the Applicant received a warning in June 2004, when the software detected Applicant accessing a pornographic website, but acknowledged that the monitoring system is not checked regularly. He checked it before the hearing and stated that Applicant had not accessed pornographic websites since 2004. However, the FSO confirmed that the monitoring system is checked infrequently. The CEO testified that Applicant would be fired if he accesses pornographic websites with his computer, a fact known to Applicant. The COO, CEO, and FSO are aware that Applicant continues to view pornography on his personal computer at home.

POLICIES AND BURDEN OF PROOF

The Revised Adjudicative Guidelines contain factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both

disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline E (Personal Conduct), Guideline M (Misuse of Information Technology Systems) and Guideline D (Sexual Behavior) .

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.[2]

CONCLUSIONS

The government failed to establish a Guideline E case. All aspects of Applicant's conduct are completely addressed by the adjudicative criteria for misuse of information technology systems, and that misuse did not occur under any circumstances implicating the more substantive criteria under personal conduct. I resolve Guideline E for Applicant.

The government established a case for disqualification under Guideline M, by demonstrating Applicant's extensive use of government/company computers to access pornography sites.[3] His use was deliberate and in knowing violation of government and company policies. None of the mitigating conditions apply. The misuse was recent, not under unusual circumstances, and casts considerable doubt on Applicant's good judgment.[4] It was not minor or aimed at any organizational

[2] *See*, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

[3] ¶ 40.(a) illegal or unauthorized entry into any information technology system or component thereof; (e) unauthorized use of a government or other information technology system;

[4] ¶ 41.(a) so much time has elapsed since the 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;

benefit.[5] The misuse was neither unintentional, inadvertent, nor followed by corrective actions and disclosure.[6] Further, given Applicant's pornography addiction as noted below, I cannot reasonably conclude that the misuse is not likely to recur, Applicant's promises notwithstanding. I conclude Guideline M against Applicant.

The government established a case for disqualification under Guideline D, by demonstrating numerous and varied manifestations of Applicant's pornography addiction,[7] that leave him potentially subject to duress,[8] including numerous incidents occurring at work and other public places.[9]

Both Applicant and his therapist stressed the parallels between alcohol addiction and Applicant's pornography addiction. The analogy is apt, but does not lead to the conclusion Applicant desires. He argues that now that he no longer uses government/company computers, his pornography viewing is no different than having a drink. Both activities are legal. However, Applicant's argument ignores his addiction. He is like the alcoholic who thinks he can continue to drink, without falling into abusive patterns of drinking. Applicant's continued pornography has moved beyond the "slips" discussed by his therapist. And perhaps Applicant has not moved into relapse as discussed by his therapist because he continues to go to SA and work his step program. However, his substituting a book study group for a program sponsor is not something his therapist is aware of, or opined on. Further, his description of his pornography viewing after he last met with his therapist might fairly be described as "binging"—several days off the wagon of abstinence before returning to sobriety for a time. Additionally, Applicant was apparently down this road in late 2003-early 2004, with an absolute commitment to abstinence, a vigorous 12-step program, and regular individual therapy, to no avail. What is clear is continued regular pornography viewing by a compulsive viewer. While it may be that his pornography viewing will not get any worse, it is equally likely, given his history, that it will. The worse it gets, the worse his relationship with his wife is likely to get and the greater the likelihood that the time will come when he is unable to refrain from using government/computers to view pornography.

Applicant failed to mitigate the security concerns raised by his sexual behavior. The conduct is recent, indeed ongoing.[10] Applicant was not an adolescent at the time of the conduct, which has

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[5] ¶ 41.(b) the misuse was minor and done only in the interest of organizational efficiency and effectiveness, such as letting another person use one's password or computer when no other alternative was readily available;

[6] ¶ 41.(c) the conduct was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification of supervisor.

[7] ¶ 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;

[8] E ¶ 13.(c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;

[9] ¶ 13.(d) sexual behavior of a public nature and/or that which reflects lack of discretion or judgment.

[10] ¶ 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;

continued nearly 50 years to within weeks of the hearing.[11] The fact that many of his friends, neighbors, and co-workers are aware of his addiction, and his struggles with treatment somewhat mitigates the potential for duress. But the disclosure offers little assurance that Applicant would be as forthcoming in the future should his addiction get worse instead of better.[12] I resolve Guideline D against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline E:	FOR APPLICANT
Subparagraph a:	For Applicant
Subparagraph b:	For Applicant
Subparagraph c:	For Applicant
Subparagraph d:	For Applicant
Subparagraph e:	For Applicant
Paragraph 2. Guideline M:	AGAINST APPLICANT
Subparagraph a:	Against Applicant
Paragraph 3. Guideline D:	FOR APPLICANT
Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph c:	Against Applicant
Subparagraph d:	Against Applicant
Subparagraph e:	Against Applicant
Subparagraph f:	Against Applicant

DECISION

In light of all 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 denied.

[11] ¶ 14.(a) the behavior during or prior to adolescence and there is no evidence of subsequent conduct of a similar nature.

[12] ¶ 14.(c) the behavior no longer serves as a basis for coercion, exploitation, or duress.

John G. Metz, Jr.
Administrative Judge