DATE: November 20, 2007

In Re:	)	
	)	
----------	)	ISCR Case No. 06-23018
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

DECISION OF ADMINISTRATIVE JUDGE
CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT
Nichole Noel, Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant, a 48-year-old scientist with a major defense contractor, failed to mitigate personal conduct security concerns relating to failure to give accurate answers to Questions 19 and 20 on his SF 86 relating to circumstances of his leaving former employment growing out of two incidents of accessing pornography on his company computer and the type of mental health treatment received as a result of those incidents and depression. Clearance is denied.

STATEMENT OF THE CASE

On March 20, 2007, the Office of Hearings and Appeals (DOHA) pursuant to Executive

Order 10865, *Safeguarding Classified Information Within Industry* 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, issued a Statement of Reasons (SOR) to Applicant which detailed 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, received March 27, 2007, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to another judge on July 11, 2007, and re-assigned to me on July 16, 2007. A Notice of Hearing was issued July 20, 2007 for a hearing held on August 9, 2007. The Government introduced three exhibits and Applicant introduced six. All were accepted into evidence. An investigator testified for the government. Applicant and three witnesses testified on behalf of Applicant. The transcript was received on August 20, 2007.

FINDINGS OF FACT

Applicant admitted with explanation three of the four SOR allegations relating to personal conduct security concerns. He denied the fourth. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 48-year-old employee of a major defense contractor working as a senior principal engineer since 1999. He holds a B.S., Master's, and Ph.D. in electrical engineering. Before his present employment he worked in a similar field for another major defense contractor for 12 years between 1987 and 1999. He has held a security clearance for 20 years. While employed at his former employer he accessed pornographic sites on his company computer on two occasions on October 23, and October 25, 1997. The total time for both occasions was almost four hours. As a result he received a reprimand, was placed on a 30 day suspension without pay, and cited for an ethics violation. Only two weeks before the incident he attended his first computer training during which time he was cautioned against using the computer for such purposes. He was advised that any further mis-use of the computer would result in further sanctions including termination of his employment (Exh. 3 Item 3).

On November 18, 1999, Applicant again used his company computer to access pornographic sites and when confronted with the allegation, denied it. He told investigators that a colleague who was a personal friend of his might have used his computer, or cleaning personnel who had access to his office. When the investigators looked into the matter, neither of these leads was productive. Applicant was again interviewed and admitted that he had accessed the sites. He was told that he would again be placed on leave without pay as had been done before. Consideration was given to discharging him since there had been three separate violations on three dates (Exh. 3) although he may not have been aware of those company deliberations. He resigned from the company on March 2, 1999. He was engaged to teach at a university for the Spring semester of 1999 and was hired by his present employer in July 1999. When he was interviewed at the company he advised them of the circumstances of his departure from his former employer (Exh. B).

On March 31, 2004, Applicant filed an application for security clearance renewal (SF 86) in which he answered two questions relating to medical treatment and reasons for leaving a former employment which are the basis for the actions to revoke or deny his security clearance. Question 19 asks whether an applicant has consulted with a mental health professional in the last seven years about a mental health related condition, and if that consultation involved only marital, family, or grief counseling not related to violence. Applicant answered "yes" to both parts of the question. Question 20 asks about employment record and specifically asks if an applicant had left employment by mutual agreement following allegations of misconduct, or left by mutual agreement following allegations of unsatisfactory performance. Applicant answered "no" to this question.

After he resigned from his position with his former employer, Applicant had serious depression occasioned by the circumstances of his departure as well as the trauma of an automobile accident that could have, but did not, cause fatalities in his family. He sought the care of a psychiatrist and saw him for 12 or more counseling sessions in late 1999 and early 2000. His wife attended several of these with him concerning the impact his actions had on their marital relationship. He was diagnosed as having an impulse control disorder and being "ego distonic" meaning that he did not act the way he believed he should have based on his religious and moral beliefs (Exh. 3. p. 4). After the counseling concluded, Applicant was discharged and the doctor concluded that he had made positive changes with a favorable prognosis. He also concluded that Applicant did not have a condition that could adversely impact his judgment or reliability or ability to safeguard classified information.

Applicant was interviewed by an investigator under contract with the government on February 16, 2005 about several subjects but primarily about the events leading to his resigning his employment and his psychiatric treatment (Exh. 2). Applicant gave the investigator his permission to interview his psychiatrist which he did. The investigator was advised that Applicant's treatment was related to depression and job loss.

Applicant testified that he believed when he left his former employment, that no record of his misconduct existed in the company personnel files and that he was leaving on good terms. The official file from the company and a transmittal letter (Exh. 3) indicates that he resigned in lieu of termination which meant that he could not be re-hired. His former supervisor believes that it is quite likely Applicant was told that he was leaving on good terms and believed it, but the company did make such representations that later proved not to be so reflected in company records. (Exh. A).

Applicant has been married for 23 years and has three children ages 20, 18 and 14. His oldest child is now working successfully as an intern for his present company. He is highly regarded by colleagues and supervisors at his present company who submitted letters on his behalf or testified at the hearing for his skills and dedication during his eight years of service (Exhs. B-E, and Tr. 105-126). He is also highly regarded for his work and skills at his former company during the period of his employment (Exh. A).

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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. -------Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." -----"[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

The Government established each of the allegations under Guideline E Personal Conduct alleged in the SOR. The revised Adjudicative Guidelines (AG) are applicable to cases with an SOR dated after September 1, 2006. The specific condition applicable to this case is AG ¶ 16 (a) concerning Applicant's deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire used to conduct investigations or to determine security clearance eligibility.

Mitigating conditions (MC) that might be applicable include under AG ¶ 17(a) that the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts, and under AG ¶ 17(c) if the fact that the offense is so minor, or so much time has passed, or 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.

Applicant may have believed that no adverse record existed of his departure but in view of the exchange of documents that occurred after each incident (Exh. 3 Items 1,2, and 3), he certainly should have known that circumstances such as those described in Question 20 had occurred and taken the opportunity to answer it correctly and give whatever explanation he believed to be warranted. He did neither. The fact that he advised his new employer of the circumstances of his departure illustrates that he knew the circumstances under which he left and they were not favorable

circumstances.

As to his answer to Question 19, again Applicant knew that his psychiatric counseling was not totally related to marital counseling even though his wife was a participant in some of the sessions. Counseling relating to depression and his job loss did not relate solely to marital or grief counseling as it is commonly understood and should have been understood by him.

Thus, I conclude that Applicant answers to both questions at issue were erroneous and deliberate and that none of the mitigating conditions are applicable. While the conduct leading to his leaving his employment is now over eight years ago and could be mitigated by time and changed circumstances including his psychiatric evaluation, his deceptive answers on his SF 86 occurred only three years ago and I conclude against him on those two issues.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

In evaluating his behavior in terms of the "whole person concept"(AG ¶ 2), an applicant may mitigate security concerns by demonstrating the factors leading to the violation are not likely to recur(¶ 9),), and evidence of rehabilitation and other permanent behavioral changes (¶ 6). The incidents that gave rise to this proceeding may not be likely to recur. However, the SOR allegations all relate to the security clearance process and his willingness to be candid in providing responses. There certainly is evidence of remorse for the conduct at his former company and belief that it was aberrational conduct.

However, Applicant's failure to acknowledge the circumstances of his leaving his former employment and the type of mental health issues for which he sought treatment affects his credibility. In his testimony at the hearing, he continued to equivocate about the circumstances of his resignation, and the purposes of the mental health treatment he received. His knowledge of the security process over a 20 year period should have helped him avoid these problems but it did not.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude a security clearance should not be granted to him.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline E:	AGAINST APPLICANT
Subparagraph 1.a.:	For Applicant

Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against 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 renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard
Administrative Judge