



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



In the matter of:)	
)	
)	ISCR Case No. 13-00940
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esq., Department Counsel

For Applicant: Sheldon I. Cohen, Esq.

05/30/2014

Decision

CURRY, Marc E., Administrative Judge:

Applicant has a history of engaging in inappropriate sexual behavior, including soliciting prostitutes, touching women inappropriately, watching pornography on work computers, and masturbating in public places. Applicant recognizes that he has a compulsive disorder, and he is highly committed to rehabilitation, attending multiple types of therapy, including cognitive therapy with mental health professionals and spiritual therapy through his church. Although he has made significant progress over the years, it is too soon to conclude that he has mitigated the security concerns. Clearance is denied.

Statement of the Case

On, October 21, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines D, Sexual Behavior, E, Personal Conduct, M, Use of Information Technology, and J, Criminal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February

20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) , effective within the DoD for SORs issued after September 1, 2006.

Applicant answered the SOR on November 6, 2013, admitting subparagraphs 1.a and 1.b, and denying the remainder. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA), and the case was assigned to me on February 10, 2014. DOHA issued a notice of hearing on February 24, 2014 scheduling it for April 23, 2014. During the hearing, I received three Government exhibits and 20 Applicant exhibits. All were entered into the record. At Applicant's counsel's request, I took administrative notice of a hearing memorandum that he prepared. (Hearing Exhibit (HE) I) Also, I considered Applicant's testimony and the testimony of six witnesses. DOHA received the hearing transcript on May 6, 2014.

Findings of Fact

Applicant is a 39-year-old single man with no children. He earned a bachelor of arts degree in politics in 1997, and he earned a master's degree in philosophy in 2002. (GE 1 at 10) Since 2004, he has been working for a defense contractor as a management consultant. (Tr. 11)

Applicant has touched females inappropriately approximately 30 times over the course of his life. The majority of the episodes occurred before the age of 14. His teacher reprimanded him on one occasion, but he was never formally punished. (Tr. 210) As an adult, he engaged in this conduct approximately four times between 2007 and 2008. (GE 2 at 8) During one episode in 2007, he "lightly touched" the buttocks of a woman on the sidewalk. (Tr. 211) She then glared at him and kept walking. (GE 2 at 8) Two other incidents occurred that year in a bookstore. In both instances, he groped a woman, then concealed himself among the tall bookshelves to avoid detection. (Tr. 211-212) In 2008, he rubbed himself against the buttocks of a woman on a crowded subway "with the intention of getting sexually stimulated." (Tr. 212)

In 2001, Applicant was asked to leave a public library for viewing pornography on the library's computer. (AE A at 10) In October 2003, at his previous job, while alone in his private office, he masturbated several times while looking at pornography. (Tr. 215; GE 3 at 9)

Since joining his current employer, Applicant has viewed pornography four times on his employer's computers. (Tr. 218-219) On one occasion, he looked at pornography while working late at a Government site. (Tr. 215) The computer was unclassified. (Tr. 215) During some of these occasions, Applicant was simultaneously masturbating while looking at pornography on the job. Applicant has also looked at pornography a few times on his work laptop at home while masturbating. (Tr. 215)

Between 2003 and 2011, Applicant looked at inappropriate video clips of a sexual nature approximately 30 times either at work or at home on his work laptop. (Tr. 223) Twenty-five of these episodes occurred on his previous job in 2003. (Tr. 220) These images were pornographic. The five most recent episodes, between 2005 and September 2011, typically either involved bikini contests, or “images of the female lead in mainstream television shows where the female lead was kidnapped and tied up.” (Tr. 222) Applicant finds such imagery sexually stimulating. (Tr. 222) Applicant most recently viewed a pornographic video clip while at work in 2007. (Tr. 224)

Applicant has a history of masturbating in public. The majority of these episodes occurred when he was a minor. The most recent two occasions occurred in a bookstore between 2007 and 2008. During each episode, Applicant lurked behind the bookshelves, leered at female patrons, then masturbated fully clothed to the point of ejaculation while pretending to look at books. (Tr. 216-217; GE 2 at 8)

Between 1993 and 2008, Applicant spent approximately \$3,000 on escorts, prostitutes, and inappropriate activity in massage parlors, and approximately \$11,000 at strip clubs. (Tr. 223) He retained escorts 12 times, primarily between 1998 and 2000 while he was in graduate school. (Tr. 225) He had “full blown sexual intercourse” with an escort on one occasion, and received miscellaneous sexual services from escorts on the other 11 occasions. (Tr. 225)

During a previous investigation conducted by another Government agency, Applicant stated that he spent \$30,000 at strip clubs, prostitutes and escorts. (GE 3 at 16) At the ISCR hearing, he explained that he intentionally gave an estimate that was high during the previous investigation because he was “hooked up to [a] polygraph,” and was afraid that the more accurate lower estimate “might give off a physiological response that could be construed as a lie.” (Tr. 226-227) Applicant testified that he actually spent approximately \$18,000 on sexual services and at strip clubs. (Tr. 228)

In July 2010, Applicant was in a bar when he noticed two attractive female patrons and began “leering” at them. (GE 2 at 3) He then reached in one of his front pants pockets to grab a handkerchief, while “maintaining [his] gaze at the women.” (GE 2 at 3) The bartender then asked him to leave the bar, and he complied. While driving away, Applicant was stopped by a police officer who accused him of exposing himself in the bar. (Tr. 231) Applicant denied this behavior, and the police officer neither arrested him, nor charged him with a crime. Applicant continues to deny the allegation.

Appellant first sought professional counseling in April 1995, at age 20 while in college. He received treatment from the campus psychologist. (AE B at 1) After finishing college in May 1998, he began treatment with another psychologist, from whom he received treatment through 2000. This psychologist diagnosed him with dystymia, a mild form of depression, and obsessive compulsive disorder. (AE A at 4) Applicant took medication prescribed by a psychiatrist to control the symptoms.

In July 1999, Applicant's psychologist suspected that he may be a sex addict, and referred him to Sex and Love Addicts Anonymous (SLAA). (AE B at 1) He attended SLAA meetings up to four times per week from 2000, and through April 2002. (AE A at 3; AE B at 2)

In May 2002, Applicant, at the suggestion of his SLAA sponsor, switched to Sexaholics Anonymous¹ (SA). (AE B at 2) These programs are modelled on the principles of Alcoholics Anonymous (AA). (AE H at 1; AE Q at 16) The analogy between AA and SA is set forth on the SA website. Specifically, the situation of a person addicted to sex "is much like that of the alcoholic who can no longer tolerate alcohol and must stop drinking alcohol altogether but is hooked and cannot stop." (AE H at 2) SA is not for people who merely seek to "control and enjoy" their sexual compulsions, "much as the alcoholic would like to control and enjoy drinking." (AE H at 2) Rather, SA is for people who recognize that "lust is the driving force behind . . . sexual acting out, and true sobriety includes progressive victory over lust" in its many forms including sexual thinking and stimulation. (AE H at 2, 3)

Applicant attended SA three to four times per week. (AE B at 2) In December 2002, he joined a "lust accountability" group. This was an SA subgroup premised on the opinion that "lustful thoughts and feelings are the genesis of any sexual acting out behavior." (AE B at 3)

Like AA, SA has a 12-Step program.² By 2004, Applicant had completed the 12-Step program and was helping others in his support group. (AE B at 3) While in SA, Applicant continued to receive counseling both from a social worker and a psychiatrist. (AE B at 3) He stopped receiving clinical therapy in April 2003 after switching to a job that did not have health benefits, but he continued to attend SA. (AE B at 3)

After beginning his current job in March 2004, his SA attendance decreased slightly because of the job's time demands. (AE B at 3) After getting settled into the job, he increased his SA attendance to three to four times per week. (AE B at 4)

In 2004, Applicant began receiving counseling from his pastor. (Tr. 88) His pastor characterizes him as a man "without guile." (Tr. 86-87)

In 2008, after the incidents of touching and public masturbation, Applicant increased his counseling attendance by attending a theophostic prayer circle. (AE B at 4) According to the psychologist who most recently evaluated Applicant, theophostic prayer is "a spiritual form of cognitive behavioral therapy." (Tr. 160)

In 2010, Applicant formed a theophostic prayer circle at his church. As the person who formed the group, he completed an 18-month training program. (AE B at 4)

¹The SLAA sponsor believed that the SA program was stronger than the SLAA program. (AE B at 2)

²The individual steps are set forth at AE H at 3.

Training classes were three days per week. The training consists of 30 sessions where the students learn the appropriate methodologies of theophostic prayer ministering and its implications. Before being accredited as a facilitator, students have to pass several tests. (Tr. 48; Tr. 255) While not in classes, he continued to attend SA meetings. (AE B at 4)

A friend in Applicant's prayer circle characterized him as honest and caring. (Tr. 132) According to the friend, Applicant readily shared his issues with sexual compulsion with the group, was regretful about his behavior, and firmly committed to confronting his compulsion. (Tr. 132-134)

The person who trained Applicant in theophostic prayer testified. He is aware of Applicant's sexual addiction and testified that Applicant has "really thrown himself into the bottom of what is causing him to move into these behavioral areas." (Tr. 54) As a person who has successfully completed training, Applicant now trains other people in theophostic prayer ministering. Through the techniques learned with theophostic prayer ministry, both as a facilitator and a recipient, Applicant is learning to cultivate healthy relationships with women and quell temptations to engage in inappropriate sexual behavior. (GE 3 at 12; Tr. 256)

In early 2012, Applicant took a series of faith-based classes based on a combination of Judeo-Christian spirituality and neuroscience. It is aimed at "healing from trauma and addiction and then also developing healthy relationships" with women (Tr. 245, 274) The classes were developed by a neurologist and several pastors. (Tr. 263) Through these classes, Applicant has learned various types of meditation exercises that he practices everyday. (Tr. 266-267) These exercises help him control the temptation to engage in improper sexual behavior. (Tr. 267)

A fellow SA participant testified. He has known Applicant for five years. They met through the SA program, and are "accountability partners." (Tr. 104). He elaborated on the mission of SA and provided a character reference. He and Applicant call one another for support when they are tempted to look at pornography. (Tr. 104)

Applicant is always willing to share with newcomers to the group "how bad things were and how good they are now [and] what he did to make things better." (Tr. 113) Not unlike the other SA members, Applicant has bad days where he is tempted to look at pornography. But his bad days are "a long way away from [where he was] four or five years ago. (Tr. 104) The witness' appreciation for Applicant's character is so strong that he "gave up his anonymity" to testify on Applicant's behalf. (Tr. 102)

Four fellow SA members and one member of Applicant's prayer group provided written character references. (GE C-G) One of these individuals characterizes Applicant as "the person in the fellowship [he] depend[s] on most to keep [him] accountable." (AE D) According to another SA member, Applicant has "progressively moved away from destructive behavior that has led to the questioning of his reliability to hold a security clearance. (AE E) Another SA member characterizes Applicant as an introspective man

with a strong moral compass, who “freely admit[s] his problems with lust, and sincerely seek[s] recovery.” (AE F)

A psychologist conducted an evaluation of Applicant between January and March of 2014. (AE S) He has been practicing psychology since 1980, and worked as a military psychologist from 1985 to 1991. While in the military, he conducted fitness-for-duty evaluations and diagnostic evaluations in regard to acceptance into specialized schools. Over the years, since leaving the military, he has periodically consulted with one of the armed services’ clearance adjudication facilities. Since 2005, he has conducted approximately 40 to 50 evaluations in connection with security clearance issues. (AE R; Tr. 142-143)

After meeting with Applicant four times and conducting various objective and subjective tests, the psychologist diagnosed Applicant with dysthymic disorder, generalized anxiety disorder, and “impulse control disorder/sexual compulsion/sexual disorder not otherwise specified” in three-year remission. (AE S at 6-7) The psychologist characterized Applicant as “hard on himself and ready to report his difficulties”

The psychologist concluded that Applicant’s problems with acting out sexually stem from an inability to nurture emotionally intimate relationships with females. This problem can be overcome through appropriate treatment such as what Applicant has been receiving. (Tr. 153)

The psychologist also concluded that a significant amount of time has elapsed since Applicant engaged in the behavior set forth in the SOR. He used the following analogy to explain this conclusion:

If I were treating a heroin addict or an alcoholic and they came in and said yeah, I’m three years sober or I’m three years off, we’d have the band out and the balloons. That would be considered having moved from immediate or initial recovery into moderate or long-term recovery. So he’s engaged in the treatment and there’s been years in between him and the last inappropriate behavior. (Tr. 161)

Applicant’s supervisor for the past year and a half testified. He characterized Applicant as an excellent worker. He is aware of Applicant’s history of aberrant sexual behavior, stating that Applicant explained them to him in “excruciating detail.” (Tr. 31)

Applicant provided all of his job evaluations since beginning to work for his current employer ten years ago. All of them are generally favorable. (Ex T)

Applicant eagerly engages in other activities through his church besides counseling. He holds financial power of attorney for a fellow church member who is disabled and living in a nursing home. (Tr. 49-50) He goes “way above the call of duty” in managing the financial affairs of this individual. (Tr. 55)

Applicant considers the turning point of his lifelong battle with sex addiction to be his decision to engage in theophostic prayer in 2008. Through this prayer ministry, he has gained inner peace and has learned to control the underlying negative emotions that compelled him to act out sexually. (Tr. 331)

Currently, among the support groups in which Applicant is involved, he goes to meetings five nights per week. (Tr. 247) Applicant also has volunteered for leadership positions in these various groups such as treasurer, literature chair, and “daily renewal partner,” a position analogous to an AA sponsor. (Tr. 248)

Applicant recognizes that controlling his sex addiction is a life-long struggle. Through March 2014, he was still occasionally looking at pornography on his computer at home, on average, two to four times per month. (Tr. 336) Each time, however, he would contact a member of his one of his support groups.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking to obtain a favorable security decision.

Analysis

Guideline D, Sexual Behavior

Under this guideline, “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' reliability, trustworthiness, and ability to protect classified information" (AG ¶ 12). Applicant readily admits that he has a compulsive disorder that makes it difficult to control his sexual behavior. He testified in a full, frank, and detailed manner about the multiple episodes of aberrant sexual behavior in which he has engaged over the years, and volunteered information about deviant sexual interests that were not alleged in the SOR. I conclude that Applicant is credible. Consequently, given his testimony that he did not expose himself at a bar in 2010, as alleged in SOR subparagraph 1.e., I resolve this allegation in his favor.

Applicant's behavior, as set forth in the remaining SOR allegations, triggers the application of all of the disqualifying conditions under AG ¶ 13, as follows:

- (a), sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (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;
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and
- (d) sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

Applicant acknowledges his sexual addiction and is firmly dedicated to controlling it. He is actively involved in multiple support groups, not only as a recipient of counseling, but as a trained and certified group leader. Numerous witnesses and character references either testified or wrote letters characterizing him as an honorable man who is a role model in both his church community and his SA community. His employer is aware of his addiction, and continues to speak highly of him. Moreover, a psychologist who recently evaluated him testified that Applicant was in the moderate-to-long-term phase of recovery from his addiction.

Applicant, however, was still looking at sexually inappropriate video clips while at work through 2011, and viewing pornography two to four times monthly as recently as March 2014, five months after the issuance of the SOR. Watching legal pornography in the privacy of one's home typically does not generate a security concern. However, according to the background information about SA that Applicant submitted, sexual addiction is analogous to alcohol addiction. Like the alcoholic who must totally abstain from alcohol, the sex addict must totally abstain from indulging in his sexual compulsions. Per the SA background information, "sexual sobriety" is reached through progressive victory over lust. Because Applicant was still recently watching pornography on occasion, I conclude that he does not have a sufficient record of sexual sobriety to alleviate the security concerns.

I recognize, as the third witness stated, that the SA standard of sexual sobriety is an ideal, and may be impossible to attain given the ubiquitous nature of sexual imagery in our popular culture. Specifically, sexuality is typically portrayed in a prurient light, from suggestive lyrics on the radio, to provocative advertisements at the mall, to risqué shows on television. In sum, exposure to such provocative sexual imagery is nearly unavoidable.

Conversely, exposure to pornography is not unavoidable. No matter how sexually saturated popular culture is, a person walking down the mall concourse, turning on his computer, going to the movies, or watching mainstream television will not automatically be exposed to pornography. However, finding and watching pornography, as Applicant was recently doing, requires a conscious decision to do so. Because he has not mastered his compulsion to watch pornography, the risk of recurrence of the deviant sexual behavior, in which he indulged through 2008, remains high, and it is too soon to conclude that he has mitigated the security risk. None of the mitigating concerns apply.

Use of Information Technology

The security concern under this guideline is set forth as follows in AG ¶ 39, as follows:

Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information technology systems include all related computer hardware, software, firmware, and data used for the communication, transmission, processing, manipulation, storage, or protection of information.

Between 2003 and 2011, Applicant watched pornography and inappropriate video clips on work computers at the office, at home, and once, at a Government site. AG ¶ 40(a), "unauthorized use of a government or other information technology system," applies.

Applicant has not viewed any pornographic images on work computers since 2007. However, he viewed sexually inappropriate imagery on work computers as recently as 2011. Under these circumstances, it is soon to conclude that ¶41(a), "so much time has elapsed since the behavior happened . . . that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," applies.

Guideline E, Personal Conduct

Under this guideline, "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"

(AG ¶ 15). Applicant's behavior, as discussed above, triggers the application of AG ¶ 16(e), "personal conduct . . . that creates a vulnerability to exploitation, manipulation, or duress."

The following mitigating conditions under ¶ 17 are potentially applicable:

(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

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant has obtained multiple types of counseling to address his problem. Both his employer and the people with whom he socializes are aware of his problem. However, some of his worst episodes of misconduct occurred between 2007 and 2008 when he was actively involved in counseling. Moreover, given that he has a compulsive disorder that has caused him in the past to engage in deviant sexual behavior, and the fact that he only stopped looking at pornography in March 2014, it is too soon to conclude that the personal conduct that generates the vulnerability to exploitation, manipulation, or duress is unlikely to occur. AG ¶ 17(e) applies, but not AG ¶ 17(d).

Criminal Conduct

Under this guideline, "criminal activity creates doubt about a person's judgment, reliability, and trustworthiness" (AG ¶ 30). Moreover, "by its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations" (*Id.*).

Although watching pornography on one's work computer generates security concerns under Guidelines E and M, as described above, it does not constitute criminal behavior. I resolve SOR subparagraph 1.c, as cross-referenced in subparagraph 2.a, in Applicant's favor.

Conversely, touching women inappropriately, soliciting prostitutes, and masturbating in public constitute criminal conduct. AG ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted," applies.

Applicant is well-respected both in his community and on the job. He participates eagerly in multiple types of therapy and is committed to controlling his behavior. AG ¶ 32(d), "there is evidence of successful rehabilitation; including, but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement," applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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."

Applicant's misconduct was serious. Although it was more frequent when he was a minor, it continued into his adulthood, and devolved from groping classmates, to soliciting prostitutes, masturbating in the office while looking at pornography on office computers, and masturbating in public. Applicant testified in an extraordinarily candid manner about his struggle with sexual addiction. He appeared sincerely committed to overcoming the problem, and is engaged in multi-modal forms of therapy. In the process, he has become a leader for other people with similar addictions, and a respected member of his church. His admission that he was still looking at pornography as recently as March 2014, however, generates doubt, and any doubt about an applicant's security worthiness must be resolved in favor of the Government. (AG ¶ 2(b))

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline M:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT

Subparagraph 4.a:

Against Applicant

Conclusion

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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge