DATE: December 5, 2002

In re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 01-17647

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Katherine A. Trowbridge, Department Counsel

FOR APPLICANT

George B. Mackey, Esq.

SYNOPSIS

Applicant with history of sexually assaulting his minor stepdaughter was charged in two indictments in 1999 with multiple counts of sexual assault, and a single count of aggravated sexual assault against a minor. He pleaded guilty and was granted deferred adjudication and ten (10) years of supervised probation that included testing, avoidance of his children without the permission of the court or his spouse, and fines. While he has made good progress with his court-referred treatment counselor, he leaves too many recurrence doubts to make safe predictions he can be entrusted to avert any recurrent sexual misbehavior with his stepdaughter. More seasoning of Applicant's commitments to avoid any future sexual misbehavior is required before he be safely entrusted to access classified information. Clearance is denied.

STATEMENT OF THE CASE

On May 31, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on July 5, 2002, and requested a hearing. The case was assigned to this Administrative Judge on August 1, 2002, and was initially scheduled for hearing on August 21, 2002, before being rescheduled for September 11, 2002. A hearing was convened on September 11, 2002, for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on six witnesses (including himself) and four exhibits. The transcript (R.T.) of the proceedings was received on September 19, 2002.

PROCEDURAL ISSUES

Prior to the close of the hearing, Applicant requested the record be kept open to permit him to supplement the record with a CV from his sex offender therapist (therapist) and additional testing materials used and relied on by Applicant's therapist in evaluating Applicant. Department Counsel having no objections, and for good cause shown, Applicant was afforded seven days after the hearing to supplement the record.

Applicant's September 18 post-hearing submissions

Within the time permitted, Applicant provided a copy of his therapist's CV. Along with the CV (item 1), Applicant also furnished copies of (2) an IPT journal article, assessing violent recidivism in sexual offenders, (3) a key reference to studies on violence prediction and risk analysis, (4) an article entitled "Static 99: Improving Actuarial Risk Assessments for Sex Offenders 1999-02," and (5) an articled entitled "Approaches to Offender Risk Assessment: Static v. Dynamic." Each of these submissions, save for the therapist's CV, is objected to by Department Counsel for lack of relevancy and absence of availability of the authors for cross-examination or voir dire. Applicant counters that each of these submissions cover actuarial testing data that was used and relied on by Applicant's therapist at hearing and are relevant to weighing the therapist's evaluations, opinions, and risk assessments of Applicant as a probationer.

Because these materials (grouped 2-5 above) were covered in the therapist's admitted evaluation of Applicant (ex. C), they are not subject to automatic exclusion by reason of the unavailability of the authors. Applicant is correct on this score. *Daubert v. Merrill Dow Pharmaceuticals, Inc.,* 113 Sup. Ct. 2786, 2795 (1993) creates gate-keeping responsibilities for the courts that require pre-admission assessments of the proffered materials for scientific validation and likelihood of the materials assisting the trier. The admitted therapist's evaluation did include testing of Applicant on static risk factors, which Applicant scored a zero. Because the therapist accorded considerable weight to this static risk score to predict low actuarial probability of Applicant's being arrested on a sexual or violent offense in the future, the materials would have some relevance to the therapist's admitted evaluations of Applicant. Their weight does not promise to be very high, however, in view of the very limited predicate of the Static 99 test: convictions. Security clearance determinations covering both criminal and sexual behavior are not limited to convictions, but encompass proven conduct, irrespective of whether there has been a conviction, or even a charge. *Cf.* DISCR OSD No. 99-0382 (May 3, 2000). For this reason, the materials that include extensive coverage of the predictive benefits of static testing are of very limited use to appraising Applicant's recidivism risks under a clearly consistent with the national interest barometer.

Under the more flexible admission standards of this administrative proceeding, which doesn't include subpoena authority, Applicant's proffered items 1through 5 are admitted as exhibits E through I. Note is made that Applicant was not tested by his therapist for dynamic (or changeable) risk assessment, which by itself would make any consideration of dynamic risk assessment of little probative value. Further diminishing any relevancy of dynamic risk assessment studies (represented by item 5) is the reported absence of any known incorporation of dynamic risk factors into sexual recidivism risk scales.

Applicant's September 20, 2002 submissions

Applicant requested post-hearing admission of a second set of materials by a second proffer made on September 20, 2002. While they are technically outside the seven day period afforded Applicant to supplement the record, they are admitted for good cause. Applicant correctly claims it was not made clear in the record as to whether a calendar period was to be used for computing the seven day period. Were weekends excluded, Applicant's submissions would have been timely, and the materials are accepted herein as timely.

Applicant's second set of items proffered for admission (items 6 through 8) are objected to by Department Counsel for similar reasons tendered in connection with Applicant's first set of items: relevance, foundation and lack of scientific validation. Specifically, Applicant seeks the submission of (item 6) a report of penile plethysmograph assessment of Applicant, (item 7) a MnSOST-R score recording sheet of Applicant, and (item 8) a scoring explanation for Static-99 testing of Applicant. Because items 7 and 8 were scored by Applicant's therapist and included in his risk assessment of Applicant (ex. C) they survive *Daubert* gate screening and may be admitted (exs. K and L) for the appropriate weight they deserve.

Admission of item 6, however, is a bit more complicated. Item 6 covers a report of penile plethysmograph assessment, which Applicant's therapist never scored. Part of Department Counsel's objection to exhibit C at hearing was predicated on the acknowledged absence of interviewing and scoring of the test and the absence of the therapist from the hearing where he could be cross-examined on his findings and impressions (*see* R.T., at 49-52). Exhibit C was admitted over Department Counsel's objections for the weight it deserved, subject to specific striking of any references to successful polygraph results (*see* R.T.,at 49-51). Like the polygraph testing Applicant's therapist utilized in evaluating Applicant's deferred adjudication claims, penile plethysmograph testing may be a helpful tool in making probation assessments for the supervising court. It may not be appraised in the same way, however, in making evidentiary findings in either a court or administrative hearing governed by court-circumscribed rules of evidence. Because Applicant does not establish either the relevancy of the plethysmograph test to assessing his recidivist risks or the scientific validity of the test in his post-hearing submissions, this item must be excluded. Any probative value the test might have to appraising the evaluation of Applicant's therapist (considering both the materials and the arguments pro and con by the parties) is concluded to be outweighed by the danger of prejudice and confusion. *See United States v. Powers,* 59 F.3d 1460, 1471-72 (4th Cir. 1995), *cert. denied,* 116 Sup. Ct. 784 (1996). Applicant's requested admission of item 6 (ex. J) is, accordingly, denied.

STATEMENT OF FACTS

Applicant is an engineer for a defense contractor who seeks a continuance of the security clearance he has held since 1989 (*see* ex. A; R.T., at 17, 56).

Summary of Allegations and Responses

Applicant is alleged to have been indicted in March 1999 and charged with aggravated assault of a child under 14 on or about July 15, 1997 and three counts of sexual assault of a child under 17 on or about July 15, 1997, for which he pleaded guilty, was granted deferred adjudication for 10 years, beginning in August 1999, and was placed on probation on conditions that he must register with the State as a sexual offender on a quarterly basis, report to the Community Supervision and Corrections department monthly, take yearly polygraph exams, a drug/alcohol evaluation, and bi-monthly drug tests, consume no alcoholic beverages, possess no guns, have no contact with any minor absent presence of his wife, provide a DNA sample and receive "Sex Offender Treatment" on a weekly basis for three years, in addition to paying a $500.00 fine and court costs.

Additionally, Applicant was indicted in March 1999 for identical sexual assault charges arising out of sexual assault of a minor on or about October 8, 1998, to which he pleaded guilty, was granted deferred adjudication for 10 years, beginning in August 1999, and placed on the same probation terms as he was placed in connection with his guilty plea to charges arising out of his July 15, 1997 sexual offenses.

For his response, Applicant admitted the allegations while denying the security concerns associated with the conduct under both Guideline J (criminal conduct) and Guideline D (sexual behavior).

Relevant and Material Factual Findings

The allegations covered in the SOR and admitted to by Applicant are incorporated by reference and adopted as relevant and material findings. Additional findings follow.

Applicant is a highly educated mechanical engineer for his defense contractor, where he has held numerous assignments over the course of his twelve plus years with the company. He has a wife and three children: a daughter (B) aged 11, born to Applicant and his wife (C), and two stepchildren, one (A) a stepdaughter aged 18 and a stepson aged 16 (*see* R.T., at 17, 55-56).

Between July 1997 and October 1998, Applicant engaged in sexual activity with his stepdaughter, who was only 14 years of age when Applicant first initiated the activity. His actions consisted of touching and fondling A in her private areas, but did not include sexual intercourse. Altogether, Applicant's sexual assaults on his minor stepdaughter occurred approximately six times over a fifteen month period spanning July 1997 and October 1998. At A's urging, Applicant ceased his sexual abuse of her: His last encounter with her was in September 1998. When she advised him she wanted to

stop, Applicant accepted her entreats, acknowledged his responsibility and promised to get her counseling and help. However, neither A nor Applicant informed C at the time of their sexual activities. Still hoping to put the activities behind him, he made the choice not to report his activities with A to either his wife or his company's FSO (*see* R.T., at 63-64, 83-84).

Instead of seeking counseling, A reported Applicant's sexual advances to friends at school, who, in turn, reported their conversation with A to school counselors (*see* exs. 1 and 3). A's school counselors, in turn, contacted the local child protective services, who proceeded to invite Applicant and his spouse to a meeting to discuss the reports (*see* ex. 1; R.T., at 25). A meeting between child protective service representatives, Applicant and C was conducted in January 1999. When first told of A's reports, C expressed surprise and discounted the reports (*see* R.T., at 25-26, 79, 83). Once Applicant acknowledged them to be true, C accepted them. Armed with Applicant's admissions, child protective services turned the information over to police. The reports and admissions resulted in separate indictments being returned against Applicant in March 1999: the first covering the initial 1997 assault (charged as aggravated sexual assault on a minor) and the second covering Applicant's last reported activity in October 1998.

Applicant did not immediately report his activities with A to his company FSO. Only after he was charged by police with sexual offenses against A (in January 1999) did he report the charges to his FSO (*see* ex. 3). When questioned about details of the criminal charges by his FSO, he claimed to have no idea what "the basis of the complaint was all about" (*see* ex. 3). His claims he withheld details of the charged activities on advice of counsel are credible and accepted. Since pleading guilty to the charges in August 1999, he has informed both his direct supervisor and most of his coworkers of the charges and his guilty pleas. Applicant's full disclosure assurances are corroborated and are accepted.

Applicant pleaded guilty in August 1999 to each of the indictment charges covering his sexual assaults of his stepdaughter. The court receiving his guilty pleas deferred adjudication and placed him under supervised probation for a period of ten (10) years beginning in August 1999, subject to numerous conditions: registration with the State as a sexual offender on a quarterly basis, report to the community supervision and corrections department monthly, submission to annual polygram and drug/alcohol evaluation, bi-monthly drug testing, avoidance of alcoholic beverages and possession of firearms, avoidance of contact with any minor without his wife being present, providing a DNA sample when requested, weekly acceptance of sex offender treatment for three years, and payment of court-ordered fines and court costs.

Applicant was, in turn, referred by the court to S (a forensic therapist specializing in the assessment and treatment of adult sex offenders) in August 1999. S is a state certified sex offender therapist who is a licensed master social worker and advanced clinical practitioner, with considerable experience in treating sex offenders (*see* ex. E). As a part of his treatment plan for applicant, S asked for and received a sexual history from Applicant. Additionally, Applicant submitted to a clinical polygraph examination to verify his truthfulness to S. S's interpreted results of the polygraph examination are inadmissible in these administrative proceedings and are stricken from S's report. Applicant was then administered two tests to assess his recidivist risks. Both tests (according to S's report) revealed low recidivist risks (*see* exs. C, K and L). Because these tests relied on conviction data and not admitted or proven criminal/sexual misconduct, they are considerably lacking in materiality to security clearance issues and must be severely discounted.

S also administered a penile plethysmograph to Applicant (as a part of his treatment program). S never scored Applicant's plethysmograph checklist, however, and as a result, any favorable opinions tendered by S on this test are necessarily excluded from probative consideration.

By all accounts, Applicant successfully completed his three-year treatment program with S. S found no indication in either his treatment or testing for arousal with adolescent females that would suggest anything more than a low risk of recurrent sexual abuse to any other sex or age group of minors (ex. C), while cautioning that any sexual re-offending would most likely be limited to an adolescent female closely related to Applicant.

Applicant's probation conditions include restrictions on Applicant's living with or even visiting any of his children without either court approval or permission of his wife. A is now 18 years of age and residing with her natural father. Until otherwise indicated by the supervising court, Applicant is ineligible to return to his family until his probation is

lifted, a process that still has over six years to run its course (*see* R.T., at 66). During the balance of his probation, Applicant will continue to be subject to annual polygraph tests, quarterly registration as a sex offender, annual drug and alcohol evaluations, avoidance of alcohol and firearm possession, and each of the other court-imposed conditions during his probation, which he has complied with to date without any problems (*see* R.T., at 38-39, 65-66).

When around his natural daughter B (now 11), Applicant is careful to avert any recurrence of his problems with A. Because he made sexual advances on his stepdaughter before, he wants to be very sure he has no inclination to treat H in any similar fashion (*see* R.T., at 67-68). As with A, Applicant never visits or sees B without his wife's being in their presence.

Applicant and his wife continue, as they have from the beginning of Applicant's acceptance of A's sexual assault charges, participated in marriage counseling. They have a speaking relationship with each other and the children. Applicant continues to work on reconciliation with his wife and the children over the incidents with A (*see* R.T., at 44-45). Applicant and his wife (C) share the hope that someday Applicant will be able to return to their home. C assures she would report any probation violation by Applicant; to date, however, she has had no cause to (*see* R.T., at 80). She trusts Applicant to adhere to his probation rules and avoid placing any of the children in any more pain or jeopardy. S joins with Applicant's supervisor and coworkers in corroborating Applicant's deep remorse for his assaults of A. Applicant remains his family's primary means of support, even while living apart from his family.

Applicant is highly regarded by his direct supervisor and many of his coworkers who are aware of his sexual transgressions with his stepdaughter. They recount Applicant as truthful and possessed of a good reputation in the community. Neither Applicant's direct supervisor nor close associates with knowledge of Applicant's sexual activities with A perceive him to pose such a security risk.

POLICIES

Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Criminal Conduct

Disqualifying Conditions:

DC 1 Allegations or admission of criminal conduct.

DC 2 A single serious crime or multiple lesser offenses.

Mitigating Conditions:

MC 1 The criminal behavior was not recent.

MC 2 The crime was an isolated incident.

MC 6 There is clear evidence of successful rehabilitation.

Sexual Behavior

Concern: 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.

Disqualifying Conditions:

DC 1 Sexual behavior of a criminal nature, whether or not the individual has been prosecuted.

DC 3 Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.

DC 4 Sexual behavior of a public nature and/or that which reflects lack of discretion or judgment.

Mitigating Conditions:

MC 2 The behavior was not recent and there is no evidence of subsequent conduct of a similar nature.

MC 3 There is no other evidence of questionable judgment, irresponsibility, or emotional instability.

MC 4 The behavior no longer serves as a basis for coercion, exploitation, or duress.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Applicant comes to these proceedings with a meritorious professional record and no criminal history before his March 1999 indictments for sexual assault (including aggravated assault) of his stepdaughter over a fifteen month period spanning July 1997 and October 1998. Applicant's charges and ensuing deferred adjudication and accompanying ten year probation raise security concerns about his judgment and reliability under Guideline J (criminal conduct) and Guideline D (sexual behavior).

That a highly educated and regarded engineer devoted to his wife and children could also abuse his young stepdaughter carries both psychological and ethical dilemmas in determining Applicant's clearance suitability. On one side is a dedicated engineering professional who has held a security clearance for most of the 13 years he has spent with his current employer without the slightest hint of compromise, laxity or permitted threat of blackmail. In juxtaposition to this professionally accomplished and devoted family head is a father who sexually abused his minor stepdaughter with whom he is involved in perhaps the most sacred and endearing trust relationship of all: The one that envelops a father and his daughter or stepdaughter (as here).

Department Counsel claims that Applicant's praiseworthy civilian record cannot overcome fundamental questions of doubt over Applicant's trustworthiness in the face of his repeated breaches of trust with A. Department Counsel's claims have merit. Both the courts and our Appeal Board have historically drawn broad lines of nexus to an applicant's non-official conduct and his executing his official duties in reliable and trustworthy fashion. Cf. DISCR OSD No. 90-1803 (March 31, 1992); DISCR OSD No. 87-2107 (October 30, 1991); accord, Stanek v. Department of Transp., 805 F.2d 1572, 1577 (Fed. Cir. 1986) (employee's removal justified where employee's conduct, if tolerated, would impair the integrity of the federal government); Ryan v. Department of Justice, 950 F.2d 458, 460-61 (7th Cir. 1991) (employee's misconduct such that his retention would impair discipline, morale or productivity of agency).

Applicant's conduct (sufficiently proven in this case despite deferred adjudication) raises sufficient moral and trust questions about his overall character to be security significant. The parental-child bond fixes firm responsibilities on the parent to care and protect his children. Public policy has never countenanced a parent's divesting his responsibilities or relinquishing his care. Children look to their parents for physical and emotional sustenance. Applicant's actions betrayed the presumed trust placed in him to protect his children, both his own and those for whom he assumed parental responsibility. Even an appreciative Government cannot look away from his serious breaches in respect and tribute to his many civilian contributions to the nation's defense effort.

Applicant's covered activities invite consideration of various disqualifying conditions under both the criminal conduct and sexual behavior guidelines of the Directive. His sexual breaches involved aggravated and sexual assault, felonious conduct covered by both DC 1 (allegations or admission of criminal conduct, regardless of charges) and DC 2 (a single serious crime or multiple lesser offenses) of the criminal conduct guidelines. His actions are also covered by DC 1 (sexual behavior of a criminal nature) and DC 3 (sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress) of the sexual behavior guidelines. Considering the length of time of the covered activities and the still relatively recency of the conduct (within 5 years), DC 4 (sexual behavior of a public nature and/or that reflects lack of discretion or judgment) warrants some bearing on the risk assessment associated with Applicant's activities as well.

While Applicant provides few extenuating circumstances to weigh in his favor, he does bring a developing record of mitigation. His exemplary civilian record, his efforts in accepting court-referred treatment with S, his expressed remorse, and his efforts to come to grips with his transgressions and begin the long, difficult process of reconciliation with his wife and children, provide positive evidence of mitigation and are encouraging. Helpful to his rehabilitation, too, are his shown openness and candor with his company supervisor and coworkers. Whether Applicant is presently entitled to the Government's full trust and confidence is less than clear on the record presented. The low risk assessment by his court-referred treatment counselor is of very limited value because of the still active debate on the relative value of actuarial testing over clinical diagnostic assessments by qualified mental health providers. S's findings are further undercut by the very limited information data that was used by S in administering the static and MnSOST-R screening tests. Both appear to rely on charges and convictions that rule out consideration of probative conduct that doesn't reach the courts. So, while Applicant has successfully completed his court-ordered treatment program and made a positive low risk impression on his court-referred treatment counselor, Applicant continues to face almost seven years of probation under conditions that preclude him from seeing his children outside the presence of his wife.

Because of the seriousness of his sexual transgressions and the lengthy probation he faces, Applicant continues to arouse troubling doubts about his ability to avert future sexual misconduct. While his treatment counselor suggests little likelihood of recurrent sexual exploitation of A, he does so sans any visible diagnostic qualifications (such as what a board-certified psychiatrist or licensed clinical psychologist would be expected to possess). Absent any clinical diagnostic evaluations to augment the very limited actuarial testing results produced by S, insufficient data exists in the record to make safe predictive estimates about Applicant's ability to withstand urges to engage in recurrent sexual misbehavior.

Even with a low-risk re-offense assessment from S and Applicant's own assurances, it is difficult to credit Applicant with significant mitigation efforts in the face of incomplete input furnished by his counselor. Neither MC 1 (lack of recency), MC 2 (isolated incident) nor MC 6 (clear evidence of rehabilitation) of the criminal conduct mitigation guidelines are available to Applicant on the strength of the information Applicant has provided in mitigation. Nor may Applicant at this time take advantage of any of the mitigation conditions covered by the sexual behavior guideline.

Applicant's conduct not only occurred during his adulthood, but it is still relatively recent and subject to court-imposed probation. The only mitigating conditions falling under the sexual behavior guideline that Applicant may rightly take advantage of are MC 3 (no other evidence of questionable judgment) and MC 4 (behavior no longer serves as a basis of coercion ,exploitation, or duress).

Overall, Applicant fails to dispel all doubts about his risks of recurrent sexual breaches. Significant risks still remain about Applicant's recurrence likelihood. Weighing the seriousness of the sexual misbehavior against Applicant's imputed duties of trust (gauged both on and off the job), no fair conclusion can be reached in Applicant's favor that he has sufficiently recovered from his sexual transgressions (resulting in profound breaches of trust to his stepdaughter) to warrant continued entrusting him with access to classified information. That Applicant presents no cognizable blackmail threat and continues to be held in high regard by his supervisor and coworkers are not enough to overcome the collective trust fallout emanating from his abuse of his stepdaughter and still in-effect probation. More time in rehabilitation in needed by Applicant to make the convincing case of mitigation by showing of successful rehabilitation. Therefore, sub-paragraphs 1.a and !.b of Guideline J and sub-paragraph 1.a of Guideline D are concluded unfavorable to Applicant

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors set forth in the Procedures section (paragraph 6) of the Directive, as well as E.2.2 of the Adjudicative Process of Enclosure 2 of the same Directive.

FORMAL FINDINGS

reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE J (CRIMINAL CONDUCT): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

GUIDELINE D (SEXUAL BEHAVIOR): AGAINST APPLICANT

Sub-para. 2.a: 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge