

DATE: June 10, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 02-21719

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has not mitigated the security significance of his wife's Iranian connections, including family members and substantial financial interests. In addition, the Applicant has a history of sexual misconduct with and involving children and the use of the Internet to obtain pornography at work. He has also lied in a questionnaire, a sworn statement and during an interview with a Department of Defense investigator. Adverse inference is not overcome. Clearance is denied.

**STATEMENT OF THE CASE**

On December 22, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on January 12, 2004, and requested that the Decision be made without a hearing. The Department Counsel submitted the File of Relevant Material (FORM) to the Applicant on August 13, 2004. The Applicant was given 30 days after receipt of the FORM to submit any additional information to the Administrative Judge. The Applicant acknowledged receipt of the FORM on August 16, 2004, and elected not to submit any additional information. The case was received by the undersigned for Decision on November 1, 2004.

**FINDINGS OF FACT**

The Applicant is 66 and married. He is employed by a defense contractor as a Software Engineer, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR and the exhibits.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has family members who are (1) citizens of another country, (2) are subject to coercion in another country, and (3) have substantial financial interests overseas.

The Applicant, a native born American citizen, was a widower when he married his second wife in 1998. His second wife was born in Iran in 1950. She came to the United States in the 1970s, and became a naturalized American citizen in 1995. She remains a dual citizen of Iran and the United States (Government Exhibit 5 at 1.) The Applicant's wife has substantial financial interests in Iran, including buildings and real estate.

The Applicant's mother-in-law and brother-in-law are Iranian citizens who reside primarily in the United States. The mother-in-law lives with the Applicant. The Applicant's wife and her brother are not close, due to a family dispute over money. The Applicant's wife's sister resides in Iran, but indicates a desire to immigrate to the United States. The wife's sister handles business affairs for the family in Iran.

Paragraph 2 (Guideline D - Sexual Behavior). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in sexual misconduct which is criminal in nature, indicates a personality or emotional disorder, subjects the Applicant to coercion, and/or reflects a lack of judgment.

The Applicant's sexual misconduct is in two areas. First, he has an interest in, and a history of, abusing young children, which is of a continuing nature. Second, he has used work computers to access the Internet for purposes of viewing adult websites.

In 1953, when he was a young teenager, the Applicant admits fondling his six year old half-sister. (Government Exhibit 5 at 5-6, Government Exhibit 6 at 2-3, Government Exhibit 13.) The Applicant also stated that, in approximately 1963, he entered the room of his first wife's daughter, then 17. Once in the room, according to the Applicant, he ordered the girl to take her clothes off so she could have sex with the Applicant. This conduct was to teach her to be careful of flirting with men. The Applicant further stated that this conduct was done with the consent of his first wife, now deceased. (Government Exhibit 5 at 6-7, Government Exhibit 6 at 2.)

These two specific incidents happened over 40 years ago. As recently as 2000, however, the Applicant stated that he continued to have sexual thoughts about underage girls. In Government Exhibit 5 he states that these thoughts occurred four or five months earlier. In Government Exhibit 6 he said that the thoughts occurred three or four years earlier. The Applicant described in a sworn statement how he is able to "resist molesting again." In part, he states, "When I have an urge to molest, I am able to think of other things that make the thought go away and it seems to work." He further states, "I do not think I am a risk because I also avoid situations where I would be alone with children. I try to keep my behavior as straight as I can and I could have relapses, but I try not to." (Government Exhibit 5 at 7.)

While being employed by Defense Contractor A in 1995, the Applicant accessed adult websites using his work computer. He stated that this conduct went on for several months until his first wife got sick and he left the job to be with her. (Government Exhibit 6 at 1-2.) In his Answer, he states, "At the time, I had not thought that accessing these web sites would be considered misuse of company equipment, and when I left, still didn't." (Government Exhibit 3 at 6.)

The Applicant was working for Defense Contractor B in 1999. From April to June 1999 the Applicant installed an unauthorized ethernet card on his work computer and accessed the Internet. The purpose of this access was to enable the Applicant to do commodity trading from work. In addition, he also accessed adult websites from his work computer. The Applicant was terminated from Defense Contractor B in June 1999 for misuse of the Internet both in regards to his commodity trading and for accessing adult websites from his work computer. (Government Exhibit 6 at 3-4.)

Paragraph 3 (Guideline M - Misuse of Information Technology). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in activities not in compliance with rules, procedures, guidelines, or regulations pertaining to information technology systems.

As stated under Paragraph 2, above, the Applicant used his company computer to access adult websites at Defense Contractors A and B. That conduct will be evaluated under this Guideline as well.

Paragraph 4 (Guideline E - Personal Conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

On December 12, 1999, the Applicant completed an official DoD questionnaire in which he stated that he had been terminated from Defense Contractor B for accessing his commodity broker's website. (Government Exhibit 4, question 20.) This statement was a false answer to a relevant question about the Applicant's work history. He later stated, "I was actually terminated for accessing the commodity website and the pornography sites, but I did not list the full reason on my security papers because I was ashamed. I was also afraid that it could affect whether or not I received a security clearance." (Government Exhibit 5 at 5.)

The Applicant was subsequently questioned by a Special Agent for the Defense Security Service (DSS). In a signed sworn statement dated October 6, 2000, the Applicant stated that he had not viewed pornography on the Internet, similar to that for which he was terminated, before working for Defense Contractor B in 1999. (Government Exhibit 5 at 4.) This statement was a false answer to a relevant question about the Applicant's activities on the Internet. As stated under Paragraph 2, above, the Applicant accessed adult websites on the Internet in 1995 while employed by Defense Contractor A.

In the same sworn statement, the Applicant stated that he had "never viewed child pornography." (Government Exhibit 5 at 4.) This statement was a false answer to a relevant question about the Applicant's sexual misconduct. On page 2 of Government Exhibit 6 the Applicant stated, "When I was about age 15 or 16, I discovered magazines containing sexually explicit (naked) photographs of children in my stepfather's dresser. These magazines belonged to him."

The Applicant also admitted lying to the DSS Special Agent during the interviewing process about why he was terminated from Defense Contractor B. "I initially told [the Special Agent] that someone accessed these two sites [Playboy.com and Hustler.com] during off-hours on my computer, but I actually visited the sites myself." (Government Exhibit 5 at 3.)

The Government also alleges that the specific conduct set forth under Paragraphs 2 and 3, above, are cognizable under this Guideline as well.

### **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation will be discussed under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct

- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be subject to foreign influence, or be involved in acts of sexual misconduct, misuse of information technology or falsification of security forms, that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

### CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant is subject to foreign influence (Guideline B); has engaged in sexual misconduct (Guideline D); misused information technology (Guideline M); and that he intentionally made false material statements to DoD (Guidelines E).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him.

Turning first to Guideline B. The Applicant's wife and her family are of Iranian descent. His wife has extensive financial holdings in Iran and her sister, who is the financial intermediary in Iran, continues to live there.

Disqualifying Conditions E2.A2.1.2.1. *An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country* and E2.A2.1.2.8. *A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence* apply. None of the Mitigating Conditions apply. Given the nature of the Iranian regime, mere

statements that relatives, or the Applicant, are not subject to coercion are insufficient to bring into operation Mitigating Condition E2.A2.1.3.1. Paragraph 1 is found against the Applicant.

It is clear from the evidence that the Applicant has a serious problem with thoughts and actions regarding the molestation of underage girls. The actual conduct took place in the distant past (40 to 50 years ago), but by his own statements he has obviously continued to have such thoughts and desires, to the extent that he avoids places with children. There is no evidence that he has ever attempted to obtain any treatment for this problem, or that he has it under control.

The Applicant's accessing adult websites is not necessarily disqualifying in itself. However, given his other actions, it shows compulsive behavior which reflects a lack of discretion or judgment.

Disqualifying Conditions E2.A4.1.2.1. *Sexual behavior of a criminal nature, whether or not the individual has been prosecuted*; E2.A4.1.2.2. *Compulsive or addictive sexual behavior when the person is unable to stop a pattern of self-destructive or high-risk behavior or that which is symptomatic of a personality disorder*; E2.A4.1.2.3. *Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress*; and E2.A4.1.2.4. *Sexual behavior of a public nature and/or that which reflects a lack of discretion or judgment* apply. I have considered the time span since the documented activity, his statements, and his current circumstances. Under the particular facts of this case, I find that the Applicant has not met his burden of mitigating the adverse inference of his conduct. Paragraph 2 is found against the Applicant.

The Applicant's misuse of work computers to access adult websites was unauthorized and, with regards to Defense Contractor B, resulted in his termination. Disqualifying Condition E2.A13.1.2.3. *applies Removal (or use) of hardware, software or media from any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines or regulations*. I note the fact that the websites which he admitted accessing do not involve child pornography. However, given the other facts of this case, I cannot find that any of the Mitigating Conditions apply. Paragraph 3 is found against the Applicant.

The Government relies heavily upon the integrity and honesty of clearance holders, and it is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about material aspects of his or her personal background. The Applicant's admitted falsifications concerning extremely relevant facts are not mitigated. Disqualifying Conditions E2.A5.1.2.2. *The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* and E2.A5.1.2.3 *Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination* apply. In addition, Disqualifying Condition E2.A5.1.2.4., *Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail* applies to the conduct set forth in Paragraphs 2 and 3, above. Guideline E is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraphs 1, 2, 3 and 4 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: Against the Applicant.

Subparagraphs 1.a. through 1.e.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraphs 2.a. through 2.d.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subparagraphs 3.a. through 3.b.: Against the Applicant.

Paragraph 4: Against the Applicant.

Subparagraphs 4.a. through 4.f.: Against the 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 the Applicant.

Wilford H. Ross

Administrative Judge