

KEYWORD: Personal Conduct

DIGEST: Applicant consented to a court order to seek and participate in appropriate mental health counseling dealing with his problem of child sex abuse for incidents involving his oldest daughter. Applicant failed to establish that he received such counseling or that any of the mitigating conditions apply to his personal conduct. Clearance is denied.

CASENO: 02-22982.h1

DATE: 08/12/2004

DATE: August 12, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-22982

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

**SYNOPSIS**

Applicant consented to a court order to seek and participate in appropriate mental health counseling dealing with his problem of child sex abuse for incidents involving his oldest daughter. Applicant failed to establish that he received such counseling or that any of the mitigating conditions apply to his personal conduct. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 8 December 2003, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 18 January 2004 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 20 April 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 28 April 2004 and responded on 1 June 2004. The case was assigned to me on 7 July 2004.

**FINDINGS OF FACT**

Applicant is a 48-year-old program manager for a defense contractor. He is divorced and has three daughters who are now 20, 18, and 14 years old.

In 1998, Applicant's wife, AC, sued him for divorce. In a signed declaration, given under penalty of perjury on 10 June 1998, she alleged that Applicant approached her in January 1998 and confessed to having a strong attraction to their oldest daughter, D-1. AC spoke with D-1 who said that Applicant had "rubbed" her. AC told her husband to stay away from D-1 and seek counseling. He did. Ex. 8 at 67-68.

D-1 began acting out at school. She told her mother that Applicant had fondled her body, including "her vaginal area, sometimes skin to skin." *Id.* at 68. AC sought medical and mental health treatment for D-1. D-1 confided to the mental health practitioner that Applicant had been "abusing her for some time." *Id.* AC ordered Applicant out of their home and reported the "acts of child molestation" to the state child protection services agency. *Id.* Based on comments by her middle daughter, AC believed it was "not only possible, but probable," that Applicant molested her as well. *Id.* at 3.

On 23 June 1998, Applicant consented to a court order to seek and participate in mental health counseling to deal with his child sexual abuse problem. On 30 June 1998, a court issued a restraining order prohibiting him from contacting his wife or children. In December 1999, a court issued a custody order allowing Applicant to visit his two younger daughters for one hour, two times a month, with the consent of the children. In April 2001, the court issued a custody order allowing him to have one monitored visit a month with his oldest daughter. Answer.

Applicant received mental health counseling from July 1998 until April 2001. Ex. 6 at 1. A document submitted by the counseling service reports the reasons Applicant sought treatment as "family conflicts." It notes the original diagnosis was "adjustment disorder" and described the behavioral aspects of his illness as "depression, low-self esteem/confidence, communication issues." *Id.* at 1-2. Applicant apparently participated in weekly group and individual therapy sessions that were terminated by mutual consent. There was no diagnosis at the "discontinuing" of his treatment, but the prognosis was "good" and Applicant was not considered to have a condition that may cause a significant defect in his judgment or reliability. *Id.* at 2. Applicant told investigators that he did not wish to comment on the reason for his counseling. Ex. 5 at 1.

## 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. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of

Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial 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. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## CONCLUSIONS

The evidence of record raises two important issues of security concern: (1) whether Applicant sexually abused one and perhaps two of his children; and (2) whether Applicant fully cooperated with security officials investigating the allegations of child sex abuse. But the SOR did not allege either. Instead, DOHA alleged that, in June 1998, Applicant had a restraining order issued against him prohibiting contact with his wife and children (¶ 1.a), in June 1998 consented to a court order requiring him to participate in mental health counseling for child sex abuse (¶ 1.b), attended psychological counseling from July 1998 until April 2001 (¶ 1.c), in April 2001 a court order allowed him to have monitored visits with his oldest daughter with her consent (¶ 1.d), and in December 1999 a court order allowed him to visit his two younger daughters with their consent (¶ 1.e). Conduct involving untrustworthiness, unreliability, lack of candor, or dishonesty could indicate an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

Applicant admits each of the allegations. Ex. 3. The question remains as to their security significance. The sole disqualifying factor listed under the personal conduct security guideline that could possibly be applicable to the allegations contained in the SOR is that reliable, unfavorable information raises a security concern. DC E2.A5.1.2.1. The court order to seek mental health counseling for child sex abuse is of concern. Applicant declined to provide further information on his counseling, so it is difficult to assess whether any of the mitigating conditions apply to his case. The summary of his mental health counseling does not even address the issue of child sex abuse, so it is unclear whether Applicant ever received the ordered child sex abuse counseling. The evidence does not establish any of the mitigating conditions listed under this guideline. I find against Applicant on ¶ 1.b.

But the allegations contained in ¶¶ 1.a, and 1.c-1.d are merely recitations of evidence. Although Applicant admitted the facts alleged in these allegations, the facts do not invoke a disqualifying condition. I find for Applicant on those allegations.

## FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For 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 continue a security clearance for Applicant. Clearance is denied.

**James A. Young**

**Administrative Judge**

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.