

KEYWORD: Sexual Behavior; Personal Conduct

DIGEST: Applicant is a 56-year-old security officer. Applicant engaged in three extra-marital affairs with church members while he was a pastor of a congregation. The affairs spanned a number of years. Applicant omitted information on his security application concerning counseling for an adjustment disorder. Applicant has not mitigated the security concerns arising from his sexual behavior and personal conduct. Clearance is denied.

CASENO: 03-10912.h1

DATE: 01/31/2006

DATE: January 31, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-10912

**DECISION OF ADMINISTRATIVE JUDGE**

**NOREEN A. LYNCH**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 56-year-old security officer. Applicant engaged in three extra-marital affairs with church members while he was a pastor of a congregation. The affairs spanned a number of years. Applicant omitted information on his security application concerning counseling for an adjustment disorder. Applicant has not mitigated the security concerns arising from his sexual behavior and personal conduct. Clearance is denied.

### **STATEMENT OF THE CASE**

On December 22, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 because of security concerns arising under Guidelines D (Sexual Behavior) and E (Personal Conduct).

In his sworn answer dated January 13, 2004, Applicant responded to each of the factual allegations set forth in the SOR, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the government's case in writing on June 7, 2005. Department Counsel provided a complete copy of the file of relevant material (FORM) <sup>(1)</sup> to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the allegations. Applicant provided a written response to the FORM dated August 31, 2005. <sup>(2)</sup> The case was assigned to me on September 6, 2005.

### **FINDINGS OF FACT**

Applicant admitted the factual allegations pertaining to personal conduct under Guideline E (paragraphs 1.a, 1.b and 1.c).<sup>(3)</sup> Applicant admitted the allegation under Guideline D (paragraph 2.a) but denied the behavior was a criminal offense or could lead to coercion. Applicant's admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 56-year-old security officer for a defense contractor. He submitted a security clearance application (SF 86) on August 9, 2002. Applicant had a prior top secret clearance in 1979.<sup>(4)</sup>

Applicant graduated from college in 1977 and attended divinity school receiving a Master's of Divinity after a few years. He served as pastor of several churches for 17 years.<sup>(5)</sup>

Applicant was married from August 15, 1970, until June 8, 1998. He has five children from that marriage. He is now divorced.<sup>(6)</sup>

In about 1978 or 1979, while serving as pastor of a church, Applicant had an extra-marital affair with a member of his congregation. He resigned from his position after being confronted with the affair.<sup>(7)</sup> Applicant stated the affair was a matter of common knowledge among family, friends, and acquaintances.

From June 1997 to 1998, Applicant engaged in two extra-marital affairs with two members of his congregation. The women were sisters.<sup>(8)</sup> The husband of the first woman lodged a complaint against Applicant. Applicant spoke to the Bishop and resigned from that post as pastor in 1997 after the allegation and complaint.<sup>(9)</sup> The affairs continued after his resignation. In 1997, Applicant received counseling for an adjustment disorder.<sup>(10)</sup>

Applicant completed an application for his security clearance (SF 86) in 2002. Question 19 read as follows:<sup>(11)</sup>

#### **YOUR MEDICAL RECORD [:]**

In the last 7 years, have you consulted a mental health professional (Psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health related condition?

Applicant answered "No" to the Question.<sup>(12)</sup> He did not respond affirmatively because he sought counseling on his own.<sup>(13)</sup>

When Applicant was interviewed initially for his security clearance, he did not disclose one affair. A DSS investigator interviewed Applicant in 2003 in connection with his application.<sup>(14)</sup> At that time, he disclosed the extra-marital affairs. He explained he did not mention the incident because it was over and his wife was aware of the situation.<sup>(15)</sup>

In his Answer to the SOR, Applicant admits his sexual behavior reflects a lack of judgment or discretion. However, he states he was never vulnerable to coercion because the affairs were common knowledge among his family, friends, colleagues and acquaintances.<sup>(16)</sup>

In his August 2005 Response to the FORM, Applicant admits making a mistake but affirms he is not a threat to the safety and security of the United States. He is rebuilding his life and wants to give back by being a security officer. However, Applicant expresses concern that his grandchildren will ask why he left the ministry and is afraid someone other than himself will tell them the reason.<sup>(17)</sup>

## POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), and those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at meritorious decisions. Section E2.2 of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables

in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (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) the voluntariness of the participation; (6) the presence or absence of rehabilitation and other pertinent 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.

Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must

include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.<sup>(18)</sup> It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish conditions which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.<sup>(19)</sup> When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.<sup>(20)</sup>

Upon consideration of all the evidence submitted in this matter, the following adjudicative guidelines are appropriate for evaluation with regard to the facts of this case:

Guideline E - Personal Conduct: Conduct involving questionable judgment, trustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.<sup>(21)</sup>

Guideline D - Sexual Behavior: 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.<sup>(22)</sup>

Disqualifying and mitigating conditions, either raising security concerns or mitigating concerns, pertaining to these adjudicative guidelines, are set forth and discussed in the Conclusions section below

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and guidelines, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

### **Personal Conduct**

The government established its case under Guideline E. Applicant's actions reveal a pattern of conduct involving questionable judgment, untrustworthiness, and unreliability.

While serving as a pastor, Applicant engaged in two separate extra-marital affairs with three different women in his congregations. Applicant was forced to resign from two different churches for this behavior. Therefore Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*) applies.

Applicant's personal conduct also falls within PC DC 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*) and PC DC 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*). Despite Applicant's assertion that the affairs were matters of common knowledge, Applicant did not provide any support for his assertions. Also Applicant was not forthright with the DSS investigator about the affairs and did not admit the affairs until confronted with the information. He is now concerned about his grandchildren learning of the incidents. I find

that his personal conduct could increase his vulnerability to coercion or render him susceptible to blackmail.

In response to Question 19, Applicant denied past mental health counseling. I do not find his explanation that he relied on someone in the class who said that the question only referred to a domestic violence or criminal incident as reasonable. Applicant's other reason is also not plausible. He stated that since he went to counseling on his own accord, the question did not apply. Applicant did not answer the question because of his concern it might lead to a query about this extra-marital affairs. I conclude Applicant intentionally falsified his response to Question 19. None of the mitigating conditions apply in this case. I conclude that Applicant has failed to mitigate or overcome the government's case. Accordingly, allegations 1.a. through 1. c. of the SOR are concluded against Applicant.

## **Sexual Behavior**

The government established its case under Guideline D. Applicant admitted he engaged in extramarital affairs with three women in his congregation over a period of years while serving as pastor of a church. Sexual Behavior Disqualifying Condition (SB DC) E.2.A.4.1.2.4. (*Sexual behavior of a public nature and/or that which reflects lack of discretion or judgment*) applies in this case. SB DC E2.A4.1.2.3. (*sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress*), also applies. My reasoning is the same as discussed above under personal conduct.

There is no information of other instances of this behavior reported or charges. Since the affairs took place seven years ago, Sexual Behavior Mitigating Condition (SB MC) E2.A4.1.3.2. (*the behavior was not recent and there is no evidence of subsequent conduct of a similar nature*) applies.

I considered the remaining SB MC and conclude they do not apply. SB MC E2.A4.1.3.3. (*there is no other evidence of questionable judgment, irresponsibility, or emotional instability*) does not apply. Applicant's rationalization raises serious questions regarding his judgment, responsibility, and truthfulness. Applicant has failed to mitigate or overcome the government's case. The evidence leaves questions and doubts as to his security eligibility and suitability. Accordingly, allegation 2.a. of the SOR is concluded against Applicant.

Applicant was a mature, married man with five children serving in a position of trust as a pastor and a counselor in two different churches. His first extra-marital affair in 1979 and resignation from the Ministry did not stop him from having affairs in 1997 with two women who were sisters and member of his congregation. He continues to minimize the situation stating the affairs were common knowledge. This unproven assertion does not diminish questions about Applicant's trustworthiness and judgment. Applicant also did not answer Question 19 on the 2002 security application truthfully. For the reasons stated, I conclude Applicant is not eligible for access to classified information.

## **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by E3.1.25. of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Paragraph 2, Guideline D: AGAINST APPLICANT

Subparagraph 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 Applicant a security clearance. Clearance is denied.

**Noreen A. Lynch**

**Administrative Judge**



1. The government submitted eight items in support of its contentions.
2. Applicant's Response to Form, dated August 31, 2005.
3. Item 2 (Applicant's Answer to SOR, dated January 13, 2004) at 1-2.
4. Item 4 (Security Clearance Application (SF 86), signed October 29, 2002) at 8.
5. *Id.*
6. *Id* at 2.
7. Item 2, *supra* note 3, at 1.
8. Item 6 (Applicant's Statement, dated November 21, 2002).
9. *Id.* at 2.
10. Item 8 (Department of Defense Report, undated) at 3.
11. Item 5 (Security Clearance Application, transmitted November 5, 2002).
12. Item 2, *supra* note 3, at 2.
13. *Id.*
14. Item 8, *supra* note 10, at 2.
15. Item 7 (Applicant's Statement, dated April 4, 2003) at 2.
16. *Id.*
17. Applicant's Response to FORM, *supra* note 2, at 2.
18. Executive Order No. 10865, Section 7.
19. Directive, Enclosure 2, ¶ E2.2.2.
20. ISCR Case No. 94-1075 (App. Bd., Aug. 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
21. Directive, Enclosure 2, ¶ E2.A5.1.1.
22. Directive, Enclosure 2, ¶ E2.A4.1.1.