

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant's self-professed, longstanding (over 30 years) addiction to pornography was revealed in November 1998 when he was confronted by his supervisor with evidence that he had accessed pornographic material with his government computer. From December 1998 until July 2002, Applicant underwent individual counseling, support group therapy, and outpatient care for conditions diagnosed as clinical depression and pornography addiction. He was prescribed anti-depression medication. In July 2003, he completed a Security Clearance Application and concealed his treatment for those conditions because he was ashamed and afraid the information, if known, might cause him to lose his clearance and ultimately his job. His deliberate falsification raises doubts about his security eligibility and suitability. Clearance is denied.

CASENO: 05-00973.h1

DATE: 04/05/2006

DATE: April 5, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-00973

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's self-professed, longstanding (over 30 years) addiction to pornography was revealed in November 1998 when he was confronted by his supervisor with evidence that he had accessed pornographic material with his government computer. From December 1998 until July 2002, Applicant underwent individual counseling, support group therapy, and outpatient care for conditions diagnosed as clinical depression and pornography addiction. He was prescribed anti-depression medication. In July 2003, he completed a Security Clearance Application and concealed his treatment for those conditions because he was ashamed and afraid the information, if known, might cause him to lose his clearance and ultimately his job. His deliberate falsification raises doubts about his security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On August 2, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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. The SOR detailed reasons, under Guideline E (personal conduct) and Guideline J (criminal conduct), 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 a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated August 24, 2005, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on January 24, 2006. A complete copy of the file of relevant material (FORM)⁽¹⁾ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. No submission was made by the March 4, 2006, deadline. The case was assigned to me on March 17, 2006.

FINDINGS OF FACT

Applicant admitted a portion of the factual allegation pertaining to personal conduct under Guideline E (a portion of subparagraph 1.a.) as well as a portion of the factual allegation pertaining to criminal conduct under Guideline J (a portion of subparagraph 2.a.). Those admissions are incorporated herein as findings of fact. He denied the remaining portions of the allegations. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 57-year-old employee of a defense contractor, and he is seeking to retain a top secret security clearance granted to him in 1997.⁽²⁾ Applicant previously served in a commissioned status on active duty with the U.S. Air Force from 1971 until 1993.⁽³⁾ He has been employed by the same government contractor since September 1996, and currently serves as a senior systems engineer.⁽⁴⁾ The quality of his work performance has not been provided. Applicant was first married in 1972, and divorced in 1979.⁽⁵⁾ He married his current wife in 1981.⁽⁶⁾ He has an unspecified number of children.⁽⁷⁾

Commencing in January 1993, and continuing on a fairly steady basis until at least June 2004, Applicant and his wife received marital counseling regarding communication issues from their pastor.⁽⁸⁾ Applicant contends that verbal or physical abuse were not addressed issues,⁽⁹⁾ and there is no evidence to rebut his contention.

For a period of over 30 years, Applicant had a self-professed "addiction" to pornography involving adult women.⁽¹⁰⁾ The pornography he viewed did not involve bestiality, pedophilia, or any other acts which were deemed illegal under state or federal law.⁽¹¹⁾ In November 1998, he was confronted by his supervisor with evidence that he had accessed pornographic material with his government computer. Applicant admitted he had done so and requested help to overcome his condition.⁽¹²⁾ Applicant was not disciplined, but he was removed from his project and reassigned to another program.⁽¹³⁾ He was referred to the employee assistance program, and then to a therapist.

From December 1998 until July 2002, Applicant underwent individual counseling, support group therapy, and outpatient care. He was diagnosed as having clinical depression and was prescribed anti-depression medication.⁽¹⁴⁾ The medication has stabilized his depression and he has not experienced the urge to view pornography since being medicated.⁽¹⁵⁾ Since his group therapy ended, Applicant has been seen by his family doctor for continuing administration of medication.⁽¹⁶⁾

Applicant also started monthly "spiritual and accountability 'check-ups'" with his pastor and those "check-ups" continued at least until June 2004. [\(17\)](#)

On July 28, 2003, Applicant completed a Security Clearance Application (SF 86). The first part of question 19 pertaining to medical records asked: "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?" [\(18\)](#) The second part of the question asked: "Did the mental health related consultation(s) involve only marital, family, or grief counseling not related to violence by you?" [\(19\)](#) He responded "yes" to both questions. [\(20\)](#) He certified that his responses were true, complete, and accurate. The response to the second inquiry was not, for he had omitted and concealed his treatment for pornography addiction and clinical depression, as described above.

Nearly one year later, in June 2004, Applicant was interviewed by a special agent of the Defense Security Service (DSS). During that interview, Applicant discussed his marital counseling, his clinical depression, his pornography addiction, and his related therapy. He also conceded his response to the second question on the SF 86 was not accurate. He explained he felt the information "was not germane and not required to be reported," and that he "was afraid of this information causing [Applicant] to lose [his] clearance and ultimately [his] job." [\(21\)](#)

On August 24, 2005, he denied falsifying his response and claimed he answered the second part of the question truthfully because the "mental health related consultation did involve only marital and family counseling not related to violence." [\(22\)](#) He considered the pornography addiction and clinical depression to be a "private, family matter." [\(23\)](#) Nevertheless, Applicant conceded that, in retrospect, his failure to disclose the entire information in response to the second question was "poor judgment on [his] part." That poor judgment was motivated by "shame and fear, and the pain to [Applicant] and [his] family that this addiction caused at that time."

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead,

acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider 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 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Personal Conduct--Guideline E: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Criminal Conduct--Guideline J: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to these adjudicative guidelines are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security,"⁽²⁴⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded all of the standards are the same. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case

which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

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

The government has established its case under Guideline E. Examination of Applicant's actions reveals conduct involving questionable judgment, untrustworthiness, and unreliability. He has offered several explanations for his failure to list his therapy for pornography addiction and clinical depression in response to the inquiry regarding his medical record. His initial comments that the information was not germane and not required to be reported, or the therapy involved only marital and family counseling not related to violence, simply were attempts to avoid the truth. Those explanations were superceded by the real reasons for his concealment of the relevant and material facts in issue: he was ashamed and afraid the information, if known, might cause him to lose his clearance and ultimately his job. The evidence establishes his false response to the second portion of the inquiry and his concealment of his therapy for pornography addiction and clinical depression were deliberate. Applicant's actions in this regard fall within Personal Conduct Disqualifying Condition (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 used*

to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities), and 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).

It is to Applicant's benefit and credit that he finally acknowledged his longstanding pornography addiction and clinical depression and obtained therapy and counseling as well as medication to treat his clinical depression. However, while the therapy and counseling are deemed positive steps, in and of themselves, they are insufficient to justify the application of PC MC E2.A5.1.3.5. *(the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress)*. His vulnerability was not due to his conditions, but rather to his falsification, omission, and deception. Applicant's ensuing forthrightness regarding his falsification, omission, and deception, coming nearly one year after he completed the SF 86, was insufficient to apply Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.3. *(the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts)*. Likewise, his subsequent attempt to justify his conduct by offering additional rationalization for his actions negates the application of PC MC E2.A5.1.3.2. *(the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily)*.

Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate, meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions and activities, therefore, poses a serious potential risk to the nation's security precautions which go to the very heart of the nation's security system. An applicant's responsibilities associated with the granting of a security clearance are considerable in terms of protecting the national security and in maintaining appropriate personal conduct. Along with the responsibilities is accountability. In this instance, Applicant is now held accountable for those past actions and activities. Consequently, I conclude that Applicant has failed to mitigate or overcome the government's case. Accordingly, allegation 1.a. of the SOR is concluded against Applicant.

The government has established its case under Guideline J. Statements made by an applicant for access to classified information encompass matters within the jurisdiction of the Department of Defense, and are punishable under Title 18, United States Code, Section 1001. Applicant's explanations for failing to accurately relate his correct mental health history involving therapy and counseling simply do not justify or exonerate such actions. I conclude, therefore, that Applicant's felonious conduct--misrepresentation, falsification, omission, and concealment (deception) of his mental health history, were material and made in a knowing and willful manner in contravention of Title 18, United States Code, Section 1001. That criminal conduct clearly falls within Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. *(allegations or admission of criminal conduct, regardless of whether the person was formally charged)*. None of the Mitigating Conditions apply.

While a person should not be held forever accountable for misconduct from the past, without a clear indication of subsequent reform, remorse, or rehabilitation, I am unable to determine with reasonable certainty the probability that such conduct will not recur in the future. Standing alone, Applicant's treated conditions would justify cursory examination so long as he continued to take his prescribed medication. However, Applicant chose to ignore his fiduciary responsibilities as the holder of a security clearance and intentionally lied on his SF 86. The period of time from the

acknowledged July 2003 falsification to the closing of the record is insufficient to persuade me that recurrence of such criminal conduct is unlikely. Consequently, I conclude that Applicant has failed to mitigate or overcome the government's case. Accordingly, allegation 2.a. of the SOR is concluded against Applicant.

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 E: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Paragraph 2., Guideline J: 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 or continue a security clearance for Applicant. Clearance is denied.

Robert Robinson Gales
Chief Administrative Judge

1. The government submitted five items in support of the allegations.
2. Item 4 (Security Clearance Application (SF 86), dated July 28, 2003) at 6.
3. *Id.* at 3.
4. *Id.* at 1.
5. *Id.* at 2.
6. *Id.*
7. Item 2 (Response to SOR, dated August 24, 2005).
8. Item 5 (Statement, dated June 10, 2004) at 2.
9. *Id.*
10. *Id.* It should be noted that the record is bereft of meaningful independent evidence (i.e., a medical or counseling record or report reflecting any diagnoses pertaining to Applicant's pornography addiction or clinical depression).
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. Item 2, *supra* note 7.
17. Item 5, *supra* note 8, at 2.
18. Item 4, *supra* note 2, at 4.
19. *Id.*
20. *Id.*
21. Item 5, *supra* note 8, at 3.
22. Item 2, *supra* note 7.
23. *Id.*
24. The Directive, as amended by Change 4, dated April 20, 1999, uses "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and

Sec. E3.1.27.), "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.).