

DATE: December 27, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-04760

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

John Bayard Glendon, Esq., Department Counsel

Gina Marine, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns raised by his personal conduct and sexual behavior. 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 December 9, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline D (Sexual Behavior) and Guideline E (Personal Conduct). On January 17, 2006, Applicant submitted an answer to the SOR and elected to have a hearing before an administrative judge. The case was assigned to me October 5, 2006. On November 1, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Before the presentation of the evidence began, Applicant and Department Counsel filed a stipulation agreeing to certain redactions in his April 3, 2002, security clearance application (SF-86), which was subsequently submitted with redactions as a Government exhibit.⁽³⁾ The Government called no witnesses and introduced seven exhibits, which were identified, numbered Ex. 1 through 7, and entered into evidence without objection. Applicant appeared as a witness on his own behalf and called no other witnesses. He introduced six exhibits, marked as Ex. A through F, and these exhibits were admitted into evidence without objection, after noting the Government's reservations about Applicant's therapists' written assessments of his security worthiness. DOHA received the transcript (Tr.) of the proceeding on November 28, 2006.

FINDINGS OF FACT

The SOR in this case contains six allegations of disqualifying conduct under Guideline D, Sexual Behavior, and two allegations under Guideline E, Personal Conduct. Applicant admitted all allegations and offered mitigating circumstances. His admissions are incorporated as findings of fact.

Applicant, a software engineer employed by a government contractor, is forty-five years old and never married. He has held a security clearance since 1992. In January 2002, following a number of polygraph examinations conducted between April and August 2001 that focused on his high risk compulsive sexual behavior, he was notified that his access to Secret Compartmented Information (SCI) was revoked. (Ex. 1; Tr. 36-38, 71-74.)

Applicant acknowledges a sexual addiction that began in 1985, when he was about 24 years old. His addiction led him to solicit prostitutes and to pay them for sexual relations from 1985 to about 1999. He sought the company of prostitutes when he was lonely, experiencing stress, or depressed. In June 1988, he purchased crack cocaine to pay for sexual relations with a woman he knew. From 1999 to at least January 2002, he frequented massage parlors, where he also paid for sex. He acknowledged he knew soliciting and paying for sex was illegal. (Ex. 5 at 33; Tr. 48-52, 82.)

For most of his life, Applicant has not had the ability or inclination to form steady or long-term relationships with sexual partners. He had a steady relationship of about two years from 1980 to 1982, when he was in college. He had a five-month relationship in 1985, and another steady relationship from 1986 to 1988. He has had no steady relationship since 2000. (Tr. 41-42.)

In about 1989, after watching a television program on sexual addictions, Applicant began to wonder if he was a sexual addict. He attended meetings of Sex and Love Addicts Anonymous (SLAA) in 1989. After attending SLAA meetings for a time, Applicant concluded he was a sexual addict. The purpose of SLAA was to help its participants practice sexual sobriety. Applicant attended SLAA meetings regularly until 1992, when he stopped attending. He resumed attendance from 1995 to 1999, when he again stopped attending. He attended again from 2000 to January 2002. He attended SLAA meetings sporadically until 2003, when he quit going because he had a conflict with one of the members of the group. (Tr. 54-58.)

In January 2002, Applicant consulted with a licensed social worker in the employee and family assistance program offered by his employer, and he was referred to a licensed psychologist who specialized in sexual addictions. In February 2002, Applicant was diagnosed with sexual addiction disorder by the licensed psychologist, and he was treated approximately once a month until January 2003 for sexual compulsion. Applicant's treatment ended because the psychologist concluded he had accomplished two goals of treatment: not to see prostitutes and not to go to massage parlors. (Ex. B; Ex. C; Tr. 75-80.)

Beginning in early 2003, Applicant began treatment approximately twice a month with a licensed clinical social worker to explore issues from his childhood that she believed contributed to his sexual addiction problems. In the summer of 2005, Applicant's appointments were reduced to once a month. At the suggestion of his therapist, who considered his mood stabilized, his depression lifted, and his treatment outcome satisfactory, Applicant terminated his treatment in September 2006. Neither therapist offered a long-term prognosis. (Ex. B, Ex D, Ex. F; Tr. 81-83.)

In August 2003, while attending SLAA meetings and while in therapy, Applicant visited an adult bookstore near his home and met a man, with whom he had unpaid sexual relations at least three times between August and November 2003. (Ex. 3; Tr. 84-86.)

In October 2003, Applicant certified and signed a statement in the presence of a special agent of the Defense Investigative Service. In the statement he averred he had not purchased the sexual services of prostitutes or used massage parlors since February 2002. He stated he had not visited the adult book store to seek other sexual encounters. (Ex. 3 at 1-2.) At his hearing, Applicant said that, since October 2003, he had engaged in sexual relations with four individuals shortly after meeting them. Applicant reported that his most recent sexual encounter with a person he had just met occurred in April 2006. (Tr. 88.)

Applicant visits pornographic computer web sites. His last visit to such a website occurred in October 2006. He also visits bestiality web sites. His most recent visit to a bestiality web site occurred in early 2006. (Tr. 65.)

Applicant submitted a memorandum from a company manager who reviews his work. The manager identified Applicant as a "consistent performer" who "is self-motivated, persistent, working with little daily supervision, and willing to do whatever is necessary to get the job done." (Ex. E.)

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 personal security guidelines, as well as the disqualifying conditions and mitigating conditions 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, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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.

CONCLUSIONS

Guideline D - Sexual Behavior

In the SOR, DOHA alleged under Guideline D of the Directive that Applicant solicited prostitutes and frequented massage parlors for sexual relations from about 1985 to at least February 2002 (¶ 1.a.); that he purchased crack cocaine in about June 1988 to pay for sexual relations (¶ 1.b.); that he attended Sex and Love Addicts Anonymous from about 1989 to at least October 2002 (¶ 1.c.); that his access to special programs was revoked in about January 2002 for his acknowledged sex addiction and recent high risk compulsive sexual behavior (¶ 1.d.); that he was treated for a sexual addiction disorder by a therapist from about February 2002 to at least early 2003 (¶ 1.e.); and that he received counseling for sexual addiction from a clinical social worker from about January 2003 to at least October 2003 (¶ 1.f.).

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. E2.A4.1.1. ⁽⁴⁾

Applicant's conduct raises security concerns under four Disqualifying Conditions (DC) under Guideline D. First, Applicant's solicitation of prostitutes and massage parlor workers for paid sexual activity from approximately 1985 until approximately 2002 constituted criminal activity, even though he was not apprehended or arrested. This raises a concern under DC E2.A4.1.2.1. Second, for more than 20 years, Applicant has, by his own admissions, indulged in addictive sexual behavior. In 2002, a licensed psychologist diagnosed him as sexually addicted, and even after several years of treatment, Applicant was unable to stop his repetitive high risk behavior, thus raising a concern under DC E2.A4.1.2.2. Third, Applicant's addictive sexual behavior, particularly with individuals he has just met and does not know well, makes him vulnerable to coercion, exploitation, or duress, and raises a security concern under DC E2.A4.1.2.3. Finally,

Applicant frequented public streets, massage parlors, and adult bookstores in search of strangers who would consent to be his sexual partners. This public sexual behavior, especially in one entrusted with access to classified information, reflected poor judgment and lack of discretion., thus raising a security concern under DC E2.A4.1.2.4.

The security concerns raised by Applicant's sexual behavior could be mitigated if the behavior occurred during or prior to his adolescence, was not recent, and there was no evidence of subsequent conduct of a similar nature. Mitigating Condition (MC) E2.A4.1.3.1. and MC E2.A4.1.3.2. Additionally, Applicant's disqualifying behavior could be mitigated if his record showed no other evidence of questionable judgment, irresponsibility, or emotional instability or if his sexual behavior no longer served as a basis for coercion, exploitation, or duress. MC E2.A4.1.3.3. and MC E2.A4.1.3.4.

Applicant offered his self-help participation in SLAA and his treatment by two therapists as evidence he had sought to understand and manage his sexual addiction. His participation in psychotherapy is commendable. However, despite therapy, Applicant's compulsive sexual activity remained a security concern.

The two therapists who treated Applicant offered examples of how his behavior or mood had been altered by therapy, but neither offered a prognosis regarding Applicant's long-term sexual sobriety and ability to avoid high-risk sexual activity. Applicant testified was not able to maintain sexual sobriety during his treatment, and he continued to involve himself in sexual activities that carried a very high risk of exposure to coercion, exploitation or duress

The evidence showed Applicant's disqualifying sexual behavior began well after adolescence, when he was 24 years old, is not the only indicator of his questionable judgment, has continued for over 20 years, and even now serves as a potential basis for coercion, exploitation, or duress. Accordingly, Mitigating Conditions (MC) E2.A4.1.3.1., E2.A4.1.3.2., E2.A4.1.3.3., and E2.A4.1.3.4. do not apply.

Guideline E - Personal Conduct

Guideline E conduct raises security concerns because it involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations and could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

In the SOR, DOHA alleged that Applicant's solicitation of prostitutes and massage parlor workers for sex over a period of about 17 years, from about 1985 to at least 2002 (¶ 2.a.) and his purchase of crack cocaine in 1988 to pay for sexual relations (¶ 2.b.) raised concerns about his judgment, trustworthiness, reliability, and capacity to properly safeguard classified information.

Applicant's conduct raises security concerns under two Disqualifying Conditions (DC) under Guideline E. First, Applicant's personal conduct related to his sexual behavior raises a concern under Disqualifying Condition (DC) E2.A5.1.2.4. because it increased his vulnerability to coercion, exploitation or duress. If the nature of his sexual behavior was known, it could affect his professional standing or render him susceptible to blackmail. Second, Applicant's compulsive sexual behavior was carried out while he held a security clearance, suggesting not only a pattern of rule violation under DC E2.A5.1.2.5. but also a breach of his fiduciary duty to safeguard classified information.

Applicant's disqualifying conduct could be mitigated under Mitigating Condition (MC) E2.A5.1.3.5. if he has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress. While he is to be commended for seeking treatment for his sexual addiction, Applicant's recent conduct suggests he has not brought his addiction under control. In April 2006, he engaged in sexual activity with an individual he had just met and didn't know well, thus subjecting himself to the possibility of coercion and exploitation. Thus, MC E2.A5.1.3.5. does not apply to the facts of Applicant's case.

Although Applicant testified he no longer solicited paid sex from prostitutes and massage parlor workers, he failed to present credible evidence that his sexual addiction was under control or that he would not solicit paid sex from them if, in the future, he became lonely, experienced stress, or felt depressed. Thus the potential remains for him to become involved with these persons in criminal activities, and MC E2.A5.1.3.7. is inapplicable. No other Guideline E mitigating conditions are applicable.

Whole Person Analysis

Paragraph E2.2 of the Directive requires that the adjudicative process in a security clearance case not only assess conduct under the adjudicative guidelines, but it must also reflect a careful weighing of a number of variables known as the whole person concept. The factors to be considered in a whole person analysis include the nature, extent, and seriousness of the conduct (E2.2.1.1); the circumstances surrounding the conduct, to include knowledgeable participation (E2.2.1.2); the frequency and recency of the conduct (E2.2.1.3); the individual's age and maturity at the time of the conduct (E2.2.1.4.); the voluntariness of participation (E2.2.1.5.); the presence or absence of rehabilitation and other pertinent behavioral changes (E2.2.1.6); the motivation for the conduct (E2.2.1.7); the potential for pressure, coercion, exploitation, or duress (E2.2.1.8.); and, the likelihood for continuation or recurrence (E2.2.1.9).

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct.

It is important to note in Applicant's favor that he appears to be a valued and productive employee and is appreciated by his employer for his high motivation and professional abilities. While Applicant's on-duty conduct appears to be commendable, an assessment of his off-duty behavior is also required when determining his security worthiness

Applicant appears unable to establish safe and long-term sexual relationships. His present conduct remains addictive or compulsive, and he continues to seek sexual satisfaction from strangers, which makes Applicant potentially vulnerable to pressure, coercion, and duress and threatens his ability to adequately protect classified information.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. Where the facts proven by the Government or admitted by the applicant raise doubts about the applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nevertheless security worthy. Applicant has failed to carry his burden of persuasion.

I have reviewed and considered all of the evidence, and I have assessed Applicant's credibility and demeanor. Having done so, I conclude Applicant should not be entrusted with a security clearance. After weighing the applicable Guideline D and E disqualifying and mitigating conditions and, after considering all relevant factors in the whole person analysis, I conclude allegations 1.a. through 1.f. of Guideline D against Applicant, and I also conclude allegations 2.a. and 2.b. of Guideline E against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline D: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. The Parties submitted the stipulation to avoid a classified disclosure.
4. The Sexual Behavior Concern of the Directive also states: "Sexual orientation or preference may not be used as a basis for or a disqualifying factor in determining a person's eligibility for a security clearance."