

DATE: September 17, 1997

In Re:

Applicant for Security Clearance

ISCR OSD Case No. 97-0259

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

Matthew E. Malone, Esquire

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF THE CASE

On 29 April 1997, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 20 May 1997, Applicant answered the SOR and requested an administrative decision on the record. On 16 July 1997, Applicant responded to the Government's File of Relevant arial (FORM)--issued 17 July 1997; the record in this case closed 21 July 1997, the day the response was received at DOHA. The case was initially assigned to another administrative judge, but was reassigned to me on 15 September 1997 due to caseload considerations; I received the case on 15 September 1997 to determine whether clearance should be granted, continued, denied or revoked.

The SOR is attached to this Decision and incorporated by reference.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR; accordingly I incorporate the admissions as findings of fact.

Applicant--a 51-year old employee of a defense contractor--seeks to retain a top secret clearance.

Applicant has a history of sexual behavior which calls into question his judgment and reliability. On several occasions between 1966 and 1986, Applicant solicited prostitutes.⁽²⁾ From 1975 to 1992, Applicant engaged in an extramarital affair--apparently with the same woman. From the date of his marriage until approximately 1986, Applicant went to a massage parlor about twice a year--usually while on out-of-town business trips, but occasionally while at home. On about half these visits, Applicant had the masseuse masturbate him or perform fellatio on him. Applicant specifically recalled two sexual encounters in approximately June and August 1985.⁽³⁾ Between 1986 and 1994, Applicant did not go to massage parlors. From 1994 to January 1997, Applicant went to massage parlors eight times, each time for a massage and masturbation, once including fellatio. Applicant's spouse and coworkers are not aware of his activities.⁽⁴⁾

He figured that because the massage parlors advertised in newspapers and telephone books, their activities were legal and posed minimal health risks.

Applicant has consistently asserted that he is not subject to coercion because of his sexual activity. He asserts his good employment history and twenty-five years of proper handling classified information as proof of his good judgment, reliability, and trustworthiness.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

SEXUAL BEHAVIOR (CRITERION D)

Sexual behavior is a security concern if it involves a criminal offense, indicates a personality or emotional disorder, subjects the individual or reflects lack of judgment or discretion.^(S)

Conditions that could raise a security concern and may be disqualifying include:

- (1) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (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;
- (3) sexual behavior that causes an individual to be vulnerable to undue influence or coercion;
- (4) sexual behavior of a public nature and/or that which lacks of discretion or judgment.

Conditions that could mitigate security concerns include:

- (3) there is no other evidence of questionable judgment, irresponsibility, or emotional instability.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The Government has established its case under Criterion D. Applicant was involved in a variety of sexual behaviors from 1968 to 1997. At times, the conduct has been criminal; at all times the conduct has been indicative of poor judgment and has subjected Applicant to potential undue influence or coercion. At times the conduct has been suggestive of a personality disorder.⁽⁶⁾ The massage parlor sexual activities are of a public nature and reflect a lack of discretion and judgment. While there is no other evidence--aside of the sexual behavior--of questionable judgment, irresponsibility, or emotional instability, the length of Applicant's sexual activities suggests a continuing problem that casts considerable doubt on Applicant's fitness for access to classified information.⁽⁷⁾

Applicant's coworkers are unaware of his activities; I conclude that Applicant's spouse is similarly unaware of the activities--or is at least unaware of the full nature and extent of Applicant's activities. This subjects him to potential undue influence, notwithstanding his claims to the contrary. His work record, or the fact that he has had a clearance for twenty-five years, does not overcome the fact that for most of that time Applicant's sexual activities have subjected him to potential coercion. Applicant's sexual activities over the last twenty-nine years are indicative of poor judgment and unreliability. There is little evidence in the record to suggest that Applicant can or will put this sexual conduct behind him, particularly where he resumed massage parlor visits after a substantial hiatus⁽⁸⁾. I find Criterion J. against Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion D: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: 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 Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 (Directive).
2. This conduct violated state criminal statutes in the locations where the conduct occurred. After 1968, it also occurred while Applicant was married.
3. In a sworn statement to the DIS in February 1986 (Item 6), Applicant stated an intent to refrain from going to massage parlors to engage in sexual activity because of the health risks and his maturing sexual attitudes. Although Applicant claimed that his spouse was aware that he went to massage parlors, he indicated that she was not aware of the frequency of his visits, and it appears she was not aware of the sexual activity taking place on the visits.
4. In his answer to the SOR (Item 3), Applicant claims that in 1985 he told his spouse that he had visited massage parlors. However, Applicant does not corroborate that claim; nor does he claim that he told his spouse about the sexual activity. Further, Applicant confirms that his spouse is not aware of the massage parlor visits from 1994 to 1997. Similarly, while Applicant claims that he told his spouse about the extramarital affair, there is no corroboration of this

claim, nor is there any evidence to indicate when Applicant told his spouse.

5. The adjudicative criteria also invites the adjudicator to consider the security guidelines under criminal conduct (criteria J) or emotional disorders (criteria I) as appropriate in assessing conduct under this guideline.

6. While there has been no formal diagnosis of a personality disorder (marital difficulties are not a disorder recognized by the DSM IV), and the sexual behavior of Applicant does not appear to me to rise to the level of compulsive or addictive behavior, I am nevertheless concerned that Applicant's return to massage parlor sexual activities after a seven or eight year hiatus is indicative of a larger problem.

7. Although none of the specific activities runs the entire twenty-nine year period, I believe it is reasonable to conclude that the different activities are sufficiently similar that they reasonably constitute a course of conduct.

8. Applicant's proffered explanations for why he resumed the sexual activity simply make no sense, and certainly do not mitigate the poor judgment demonstrated by the activity.