



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-03753

Appearances

For Government: Stephanie C. Hess, Department Counsel

For Applicant: *Pro Se*

April 29, 2009

Decision

LOKEY-ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on July 27, 2007. On June 30, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 1, 2008, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on February 2, 2009. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on February 6, 2009, and he submitted no reply. The case was assigned to the undersigned for resolution on April 17, 2009. Based upon a review of the FORM,

Applicant's responses and the exhibits, eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 29 years old and unmarried. He is employed by a defense contractor as a PC Client Administrator, and is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline D - Sexual Behavior). The Government alleges in this paragraph that the Applicant is ineligible for clearance because his sexual behavior involved a criminal offense, is indicative of a personality or emotional disorder, reflects lack of judgment or discretion, or may subject the individual to undue influence or coercion, or reflects lack of judgment or discretion.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his ability to protect classified information.

The Applicant admits to the allegation set forth in the SOR under the respective guidelines set forth above.

During an interview conducted by an authorized investigator for the Department of Defense, on October 3, 2007, the Applicant admitted that he was addicted to pornography. He explained that if anyone threatened to tell his family about his addiction, he would divulge information to them, possibly restricted or classified information to prevent his family from finding out. A hypothetical presented to him by the investigator was that if an attractive female solicited restricted or classified information from him, would he be tricked into providing that information to her. The Applicant candidly acknowledged that it is possible that he could be tricked into talking about it or be susceptible to being influenced due to his lack of social skills.

In his Answer to the SOR dated August 1, 2008, Applicant stated that he views pornography no less than 4 -7 times a week. He believes that this sexual behavior could provide someone with an opportunity for coercion or undue, blackmail or undue influence. To negate the risk of blackmail or coercion, Applicant states that on July 25, 2008, he told his parents about his pornography addiction. I find the Applicant to be candid and truthful.

Policies

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guidelines. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline D -Sexual Behavior

12. *The Concern.* Sexual Behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

Conditions that could raise a security concern:

13(b) a pattern of compulsive, self-destructive, or high risk sexual behavior that the person is unable to stop to that may be symptomatic of a personality disorder;

13(c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;

Conditions that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise a security concern:

16(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The

adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline D (Sexual Behavior) Guideline E (Personal Conduct) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSION

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's pattern of inappropriate sexual behavior and personal conduct has a direct and negative impact on his suitability for access to classified information.

The Applicant admits that he is addicted to pornography. Considering the evidence in totality, this demonstrates a pattern of inappropriate sexual behavior and high risk conduct that could subject the Applicant to pressure, coercion and/or blackmail, which in turn could subject the Government to a security risk.

Applicant's high risk behavior places him in a vulnerable position to be susceptible to pressure, coercion and/or blackmail. He currently views pornography at least 4 - 7 times a week. His addiction is a pattern of compulsive sexual behavior that he cannot stop. This behavior could provide someone the opportunity to coerce, pressure or blackmail him into divulging sensitive, protected or classified information. Although the Applicant states that he recently told his parents about his addiction, there is no evidence in the record to show that his employer, co-workers, friends, members of

his community or anyone else is aware of his addiction. Thus, the risk is great that the Applicant may fall prey to exploitation, coercion or duress. Applicant's pattern of high risk behavior places the national interest at significant risk.

Under Guideline D, Disqualifying Conditions 13(b), *a pattern of compulsive, self-destructive, or high risk sexual behavior that the person is unable to stop to that may be symptomatic of a personality disorder* and, 13(c), *sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress* apply. None of the mitigating conditions are even remotely applicable. The Applicant has not met his burden of demonstrating that his sexual behavior does not raise a security concern, and Guideline D is found against the Applicant.

With respect to the Applicant's personal conduct, Under Guideline E, Disqualifying Condition 16(e) *personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States may service as a basis for exploitation or pressure by the foreign security or intelligence service or other group* applies. None of the mitigating factors are applicable. Clearly, Applicant's addiction to pornography, if known, could affect his personal, professional, or community standing.

I have also considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of poor judgement, untrustworthiness, unreliability, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

Considering all of the evidence presented, it does not come close to mitigating the negative effects of his sexual behavior and the impact that it can have on his ability to properly safeguard classified information. On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.
Subparagraph 1.a.: Against the Applicant

Paragraph 2: Against the Applicant
Subparagraph 2.a.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge