



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-07918
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: *Pro Se*

July 30, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 8, 2008. On March 11, 2009, 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 answered the SOR in writing on April 6, 2009, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on May 7, 2009. A notice of hearing was issued on May 27, 2009, scheduling the hearing for June 30, 2009. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were received without objection. Applicant called one witness, offered two exhibits, referred to Applicant's Exhibits A and B, and testified on his own behalf. The transcript of the hearing (Tr.) was received on

July 9, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 51 years old and has Bachelor's Degrees in Electrical Engineering and Math, and a Master's of Science in Computer Science. He is employed by a defense contractor as a Senior Hardware Engineer, 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 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.

Paragraph 2 (Guideline M - Use of Information Technology Systems). The Government alleges in this paragraph that the Applicant is ineligible for clearance because his noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information.

Paragraph 3 (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.

The Applicant admits to the allegations set forth in the SOR under the respective guidelines set forth above. Those admissions are deemed findings of fact.

The Applicant began working for defense contractor #1 in March 1984. While employed for contractor #1, the Applicant used the company computer to access pornographic adult web sites during company time on a sporadic basis from October 2000 through 2005. In October 2000, the Applicant received a letter of reprimand for this violation.

Again, from November 2004 through March 2005, the Applicant used contractor #1's computer to access and download non-business related internet web pages while employed there. After twenty-one years of employment with this defense contractor, in March 2005, in lieu of being terminated for the inappropriate use of the internet and mis-

charging of time against the Government contract shop orders, the Applicant resigned from his position at the company.

From March 2005 through August 2005, the Applicant was unemployed. During that time, he states that he consulted with some experts in the area of job search who told him not to fully disclose why he was terminated, but to use a three step approach. The Applicant testified that, "The first, when I was asked what was the reason for leaving, I would respond, I left for personal reasons. If they wanted more information than that, they would ask in which case I would say the HR had issues with me that were not related to my performance and if they still had, they wanted to know more then I would give them the details which would have been telling them about violation of company policy with regards to use of the computers." (Tr. p. 31).

Applicant indicates that while interviewing for a job, some defense contractors asked all three questions and so he disclosed all of the details. Other potential employers only asked the first question, so he never revealed the full details.

On his June 2005 application for employment with defense contractor #2, the Applicant failed to disclose the circumstances of his previous employment termination. Applicant simply stated that he terminated his employment with a previous defense contractor because of personal issues with Human Resources. He failed to disclose that he resigned from his position in lieu of being terminated due to his improper use of the company's computer. Applicant testified that in responding to the question on his application for employment, the space only allowed a few words. He was not trying to mislead the company; and had they asked, he would have provided a more thorough explanation.

In August 2005, while employed with defense contractor #2, the Applicant used his company computer to visit web sites that could be construed as borderline pornographic, against company policy. Applicant was aware at the time that he was violating company policy by visiting these pornographic or borderline pornographic web sites, but at the time did not realize that he was battling an addiction.

The Applicant testified that he has been working on his disorder since 1993. (Tr. p. 69). It took until March 2009, for him to realize that he is addicted to internet pornography. (Tr. p. 36). Prior to March 2009, he had been discussing the problem with his pastor at his church, but realized that he needed deeper counseling. Applicant testified that even though he had the motivation and will power to stop internet pornography, he wanted and needed to figure out for himself why he was engaging in this conduct. (Tr. p. 37).

In April 2009, he began seeing a licensed social worker on a weekly basis and plans to continue indefinitely. (Tr. p. 70). Since then the Applicant has seen some amazing changes in his life. His relationships with people at work, family, church and God are the best they have ever been. Applicant has currently not viewed pornography for 111 days, as of the hearing. Applicant has learned that his addiction to internet pornography led him to disobey company policy and procedure. He is deeply

embarrassed by the conduct. He also contends that although he spent company time wrongfully viewing pornography, he made up the time after hours by working late. He indicates that the logs of his time that were presented by company #1 to show that he abused company time, were only logs that included his time spent in the main facility. The Applicant contends that he had also been working on an off-site facility, but there were no time logs kept of that time spent at work.

The Applicant's pastor, who has counseled the Applicant for his addiction, testified that the Applicant, who is very active in the church, is extremely honest, faithful in fulfilling his responsibilities and trustworthy. He has also observed that the Applicant has progressively improved and changed since counseling with the social worker. (Tr. pp. 75 -77).

A number of company e-mail correspondence to and/or from the Applicant attests to his security consciousness. (Applicant's Exhibit A).

Letters of recommendation from the Applicant's current Program Manager, a friend and professional associate involved in the church, his daughter and his wife attest to his character traits of trustworthiness, dedication and commitment at work and to his family and friends. He is considered responsible and a man of integrity. (Applicant's Exhibit B).

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 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(a) deliberate omission, concealment, or falsification of relevant 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;

16(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(3) a pattern of dishonesty or rule violations;

(4) evidence of significant misuse of Government or other employer's time or resources.

Condition that could mitigate security concerns:

None.

(Guideline M - Use of Information Technology Systems).

39. *The Concern.* Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology Systems include all related computer hardware, software, manipulation, storage, or protection of information.

Conditions that could raise a security concerns:

40(a) illegal or unauthorized entry into any information technology system or component thereof;

40(e) unauthorized use of a government or other information technology system;

40(h) any misuse of information technology, whether deliberate or negligent, that results in damage to the national security.

Condition that could mitigate security concerns:

None.

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.

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 E (Personal Conduct), Guideline M (Information Technology) and Guideline D (Sexual Behavior) 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 his addiction to internet pornography has caused him serious problems at work. He has viewed pornographic web sites on company computers, downloaded non-business related internet web sites, and was ultimately forced to resign instead of being fired for this misconduct. He knew at the time that he engaged in the conduct that he was violating company policies. Furthermore, he was

not candid with prospective employers regarding the reason for his job resignation. Considering the evidence in totality, this demonstrates a pattern of inappropriate personal conduct, misuse of information technology and sexual behavior, which presents 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 has just recently come to grips with his addiction. His addiction is a pattern of compulsive sexual behavior that he cannot stop. He is receiving counseling to combat his urges to access pornographic sites. At the present time, however, 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 E, Disqualifying Conditions *16(a) deliberate omission, concealment, or falsification of relevant 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 16(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations, and (4) evidence of significant misuse of Government or other employer's time or resources* apply. None of the mitigating conditions are applicable. The Applicant has not met his burden of demonstrating that his personal conduct does not raise a security concern, and Guideline E is found against the Applicant.

Under Guideline M, Disqualifying Conditions *40(a) illegal or unauthorized entry into any information technology system or component thereof, 40(e) unauthorized use of a government or other information technology system, and 40(h) any misuse of information technology, whether deliberate or negligent, that results in damage to the national security* apply. None of the mitigation conditions are applicable. The Applicant has not met his burden of demonstrating that his misuse of information technology does not raise a security concern, and Guideline M is found against the Applicant.

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 or 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.

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 poor personal conduct, misuse of information technology and sexual behavior, and the impact that they 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, 2 and 3 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
Subparagraph 1.b.: Against the Applicant
Subparagraph 1.c.: Against the Applicant
Subparagraph 1.d.: Against the Applicant
Subparagraph 1.e.: Against the Applicant

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

Paragraph 3: Against the Applicant.
Subparagraph 3.a.: Against the Applicant
Subparagraph 3.b.: 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