DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 09-00963
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

February 26, 2010

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the hearing transcript, pleadings, and exhibits, I conclude that Applicant failed to mitigate security concerns under Guideline J, Criminal Conduct, and Guideline D, Sexual Behavior. His eligibility for a security clearance is denied.

Applicant executed an Electronic Questionnaire for Investigations Processing (e-QIP) on May 25, 2007. On September 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline J, Criminal Conduct, and Guideline D, Sexual Behavior. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On September 15, 2009, Applicant answered the SOR and elected to have a hearing before an administrative judge. The case was assigned to me on December 7,

2009. I convened a hearing on January 27, 2010, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced ten exhibits, which were marked Ex. 1 through 10 and admitted to the record without objection. Applicant testified on his own behalf and called three witnesses. He offered 20 exhibits, which were marked Ex. A through T and admitted to the record without objection. DOHA received the transcript (Tr.) of the hearing on February 4, 2010.

Findings of Fact

The SOR contains two allegations of disqualifying conduct under AG J, Criminal Conduct (SOR ¶¶ 1.a. and 1.b.) and one allegation of disqualifying conduct under AG D, Sexual Behavior (SOR ¶ 2.a.). In his Answer to the SOR, Applicant admitted one AG J allegation. He denied one AG J allegation, and he denied the AG D allegation. He also provided additional information. Applicant's admission is admitted herein as a finding of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact. (Answer to SOR; Ex. 5; Ex, 6; Tr. 75, 82-86.)

Applicant, who is 44 years old and employed as a field engineer by a federal contractor, has held a security clearance since 1994. He served on active duty in the U.S. military for 13 years. He currently serves in a military reserve unit as a senior noncommissioned officer. (Ex. 1; Tr. 74.)

Applicant's mother was in high school when he was born. He never met or had any contact with his birth father. When he was three years old, his mother married a man who later adopted Applicant. Applicant's stepfather was an alcoholic, and he withdrew from contact with family members when he drank. Applicant's younger brother is an alcoholic. Applicant was arrested for driving under the influence of alcohol (DUI) in 1988 and 1991. Approximately 15 years ago, he resolved to drink alcohol in moderation, which he apparently does. He has had no other alcohol-related arrests. (Ex. 1; Ex. R at 2; Ex. 9 at 5)

Applicant attended a university for one semester on a football scholarship. He later attended another college for two years but had to drop out for lack of money. He hoped to acquire more education when he joined the military. At present he is pursuing studies leading to a Bachelor of Arts degree in Paralegal Studies. He expects to complete his course work for the degree in June 2010. (Ex. Q at 3; Ex. R at 2-3.)

Applicant married in 1994. One child was born to the marriage, a son who is now 15. The marriage was difficult and stressful. Applicant's wife experienced severe mood swings and was diagnosed with bipolar disorder. While Applicant and his family were living overseas on an assignment, his wife became distraught and stabbed him with a butcher knife. Applicant and his wife divorced in 2004. (Ex. 1; Ex. 9 at 2-3; Ex. R at 3.)

In 2002, while he was assigned to active duty, Applicant was playing recreational basketball with individuals in his command. During a basketball game, Applicant ran into

another player, causing him to fall, get hurt, and break his glasses. Applicant considered the event to be an accident. He apologized to the other player and offered to pay to replace his glasses. About three months later, Applicant was sent to nonjudical punishment for the offense of aggravated assault. Because he did not believe himself guilty of the charge, Applicant declined the nonjudicial punishment and requested a court-martial. After an investigation, the court-martial prosecutor and Applicant's military defense counsel agreed that the court-martial charge would be dismissed, provided Applicant paid the other player's medical expenses of $300, replaced his damaged training gear and basketball clothing, and wrote a letter of apology. Applicant complied, and the charge was dismissed. The SOR alleged at ¶ 1.b. that Applicant's encounter with the other player on the basketball court resulted in a court-martial for aggravated assault. (SOR; Tr. 28-30, 82-84.)

After his divorce in 2004, Applicant purchased a house. He moved into the house at the end of July 2004. To meet his monthly mortgage payments of $1,300, Applicant acquired a housemate, an individual he had met, befriended, and mentored while serving in the military in 2003. He charged the individual $500 a month in rent, and the individual occupied the second floor on his house, which was comprised of two bedrooms and a bathroom. The tenant also was permitted to have access to and use of the living room, kitchen, and laundry room on the first floor of the house. (Tr. 111-115.)

During this time, Applicant was traveling for extended periods in his work as a civilian contractor. In addition to the housemate, Applicant also invited other friends and coworkers to stay at his house when they had a need to do so or were on military assignments. Applicant's girlfriend and the housemate's girlfriend also stayed at the house intermittently. The housemate and at least one other person who stayed at the house had access to Applicant's personal computer, which was in a central location in the house. These individuals used the computer regularly. (Tr. 54-58, 75, 87-88, 113-115.)

One of Applicant's witnesses testified that he used Applicant's computer occasionally between May 2003 and June 2006. This witness also stated that he resided temporarily in Applicant's house approximately every two weeks when he was on military assignment. When he was residing in Applicant's house, he saw Applicant and the housemate access Applicant's computer to view adult pornography. (Tr. 56-58.)

Applicant's housemate had an argument with a girlfriend and damaged a wall in one of the rooms he occupied in the house. Applicant asked the housemate to pay for the repair of the wall, and he agreed to do so. However, when the housemate moved out of Applicant's house in July 2005, he owed some back rent and had not provided for the repair of the wall he had damaged. In an effort to pressure the housemate to pay the rent arrearages and the wall damage, Applicant threatened to tell the housemate's command about the housemate's failure to honor his financial obligations. Applicant could not remember if the housemate retained a key to the house or if he had given him a key for access after he moved out. (Ex. 9 at 6-7; Tr. 91-93, 103-104.)

At about the same time, Applicant noticed that his computer was running slowly.[1] He concluded that his housemate had downloaded material onto the computer that slowed its operation. Applicant then went into the computer's file system, identified material that he thought had slowed down the system, and copied it to several CDs. He stored the CDs in binders in his home. He then deleted the files he had copied from his hard drive. He notified the housemate that he had the CDs and would return them and other personal items to the housemate when he either repaired the damage to the wall or paid him for the repair.[2] (Ex.9 at 7; Ex. 10 at 2; Tr. 99-104, 116-17.)

In October 2005, while Applicant was on a work assignment in another state, law enforcement officials obtained a search warrant, searched his residence, and confiscated his computer, the CDs containing the files he had copied from his computer, marijuana, and marijuana paraphernalia. Applicant's girlfriend visited the premises after the search warrant had been executed, and she called him and told him of the search. Ex. 9 at 7-8; Ex. 10 at 3.)

In July 2006, Applicant was arrested and charged with 20 counts of possession of child pornography, possession of marijuana, and possession of marijuana paraphernalia.[3] Applicant believed that the housemate provided information to investigators which led to the search of his property, his arrest, and the charges against him of possession of child pornography. He further speculated that the housemate intended to harm him by informing investigators that child pornography CD files in Applicant's residence belonged to Applicant when they had been downloaded onto Applicant's computer and viewed by the housemate. (Ex. R at 3; Ex. 10 at 1; Tr. 89.)

Applicant went to trial on the charges in March 2007. At trial, the 20 counts of misdemeanor possession of child pornography were merged into 11 counts, to which Applicant pled not guilty on each count. He was represented by an attorney with a national reputation for defending against child pornography charges. The matter was

[1] One of Applicant's witnesses was an individual who also resided periodically in Applicant's home and used his computer during the time that Applicant and the housemate also used the computer. He testified that he did not find that the computer was "full" of files or slow to respond. (Tr. 58.)

[2] Applicant also testified that the housemate left a number of items in the house when he moved out. One of the items was a CD wallet that held about 100 CDs. Applicant stated that the housemate's CD wallet was stored in the back of a closet in the computer room of his residence. In his affidavit, Applicant stated that he put the CDs containing the material he downloaded from his computer into binders. He stated he neither attempted to identify the material he downloaded, nor was he certain that the material he was downloading had been placed on his computer by the housemate. (Ex. 10 at 2; Tr. 78, 100, 114-115.)

[3] The marijuana possession and possession of marijuana paraphernalia charges against Applicant were *nolle prosequi.* Applicant's girlfriend, who later became his wife, admitted that the marijuana and marijuana paraphernalia found in Applicant's residence were hers. Because these were first offenses for her, the charges were placed on the state court's stet docket and eventually dropped. (Ex. 9 at 8; Tr. 104-105.)

fully litigated.[4] The trial court found Applicant guilty on all 11 counts. He was sentenced to one year in prison for each count, all suspended; fined $100 for each count; placed on supervised probation for three years; and ordered to attend psychiatric/psychological evaluation and/or treatment. Applicant's supervised probation will end in March 2010. (Ex. 9 at 6-8; Ex. 10 at 2-3; Tr. 75-76.)

On March 31, 2007, Applicant received a psychosocial evaluation from a licensed clinical social worker who concluded that Applicant was not in need of sex offender counseling. The social worker advised that probation monitoring was the appropriate level of care for him. In January 2010, Applicant was evaluated by a licensed clinical psychologist, who concluded that he was not suffering from a paraphilic disorder and was unlikely to engage in child pornographic activities. (Ex. J; Ex. R; Ex. S.)

Applicant submitted a signed statement of intent, dated January 27, 2009.[5] The statement of intent reads:

> 1. I am submitting this statement of intent concerning child pornography.
>
> 2. Should there be any finding of my use or viewing of child pornography, I hereby consent to automatic revocation of my security clearance.

(Ex. T.)

Applicant's family members, friends, coworkers and supervisors regard him with admiration and respect. They consider him to be professional, effective in his work, responsible, and reliable. (Ex. A through Ex. I; Ex. L through Ex. P.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no 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 have access to such information." *Id*. at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

[4] At trial, Applicant followed his attorney's advice regarding defense strategies. (Tr. 119-120.)

[5] The date on the statement of intent appears to be a typographical error. Applicant testified about the statement of intent at his hearing on January 27, 2010, and it appears from the record that the statement of intent was actually signed on January 27, 2010 and not on January 27, 2009. (Ex. T; Tr. 13, 85-86.)

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." 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 grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the 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.

Section 7 of Executive Order 10865 provides that 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." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J, Criminal Conduct

Under the Criminal Conduct guideline "[c]riminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations." AG ¶ 30.

In July 2006, Applicant was arrested and charged with 20 counts of possession of child pornography. At trial, Applicant was represented by counsel and pled not guilty to the charges. In March 2007, he was convicted of 11 merged counts of misdemeanor possession of child pornography and sentenced to one year of prison time for each conviction. His sentences were suspended, and he was given three years of supervised probation and paid a fine. His supervised probation will end in March 2010. In his answer to the SOR and at his hearing, Applicant denied the possession of child pornography charges that led to his conviction.

As a general rule, an applicant convicted of a criminal offense is precluded from denying his or her guilt in subsequent civil proceedings. DISCR Case No. 94-1213 at 3 (App. Bd. June 7, 1996.) This concept, known as collateral estoppel, is based on the premise that an individual's right to administrative due process does not give him or her the right to litigate again matters properly adjudicated in an earlier proceeding. *Chisholm v. Defense Logistics Agency,* 656 F. 2d 42, 46 (3rd Cir. 1981).

DOHA's Appeal Board has held that the doctrine of collateral estoppel applies in industrial security cases. Moreover, the Appeal Board has ruled repeatedly that an administrative judge may not engage in a *de novo* review of an applicant's guilt or innocence of a criminal charge of which he or she was convicted in a criminal court. ISCR Case No. 99-0116 at 2 (App. Bd. May 1, 2000); ISCR Case No. 96-0525 at 4 (App. Bd. June 17, 1997); ISCR Case No. 94-1213 (App. Bd. June 7, 1996).

Applicant was convicted of 11 misdemeanor charges in a state court. The United States Supreme Court has held that 28 U.S.C. § 1738 requires federal courts to apply the doctrine of collateral estoppel to state court judgments whenever the courts of the state from which the judgment was rendered would do so.[6] However, several federal circuits have held that while the language of 28 U.S.C. § 1738 applies to federal courts, it does not apply to quasi-judicial determinations of federal executive branch agencies. In ISCR Case No. 04-05712 (App. Bd. Oct. 31, 2006), the Appeal Board addressed the applicability of 28 U.S.C. § 1738 in cases where an applicant's case involves a state court misdemeanor conviction. The Appeal Board relied on federal case law in proposing the following three-part analysis to determine the appropriateness of applying collateral estoppel in such cases:

[6] *Marrese v. American Academy of Orthopedic Surgeons*, 460 U.S. 373, 380 (1985); *Haring v. Prosise*, 462 U.S. 306, 313 (1983).

> First, the party against whom the earlier decision is asserted must have been afforded a 'full and fair opportunity' to litigate that issue in the earlier case. (citations omitted.) Second, the issues presented for collateral estoppel must be the same as those resolved against the opposing party in the first trial. (citations omitted.) Collateral estoppel extends only to questions 'distinctly put in issue and directly determined' in the criminal prosecution. (citations omitted.) Third, the application of collateral estoppel in the second hearing must not result in unfairness. (citations omitted.) Federal courts decline to apply collateral estoppel where the circumstances indicate a lack of incentive to litigate the original matter. 'Preclusion is sometimes unfair if the party to be bound lacked an incentive to litigate the first trial, especially in comparison to the stakes of the second trial.' (citations omitted.) The arguments for not giving preclusive effect to misdemeanor convictions are that an individual may not have the incentive to fully litigate a misdemeanor offense because there is so much less at stake, or that plea bargains create an actual disincentive to litigate these particular issues. (Citations omitted.)

(ISCR Case No. 04-05712 at 6 (App. Bd. Oct. 31, 2006.)

Considering these legal concepts, we turn now to the criminal conduct allegations in the SOR. In October 2005, authorized law enforcement officials obtained a search warrant and executed a search of Applicant's residence. In July 2006, Applicant was arrested and charged with 20 counts of possession of child pornography. As his legal representative, he retained an attorney who specialized in defending individuals charged with possession of child pornography. He was tried on 20 counts of child pornography possession in March 2007. At his trial, he pled not guilty to all charges. He was convicted on 11 merged counts, sentenced, fined, and given three years of supervised probation. At his DOHA hearing, Applicant denied guilt for the charges of which he was convicted.

It is necessary to determine whether application of the collateral estoppel rule is appropriate in this case. The first element of the test is whether Applicant had a full and fair opportunity to litigate his case in the state court. He was charged with 20 misdemeanor offenses of child pornography possession, and those offenses were merged into 11 offenses at trial. Applicant was represented by counsel and had adequate time to prepare his defense. He pled not guilty to all charges and was found guilty by the court. I find the first part of the test is satisfied.

The second part of the test considers whether the criminal conviction covered the same facts the government sought to establish in his DOHA hearing. The SOR alleged, under Guideline J and Guideline D, that Applicant's conviction of 11 counts of possession of child pornography raised security concerns. These were the same 11 counts that were litigated in Applicant's state court criminal trial. I find the second part of the test is satisfied.

The third part of the test considers whether application of collateral estoppel would result in unfairness to Applicant. The record establishes that Applicant retained an attorney who was highly skilled in defending those charged with child pornography possession. Applicant entered into no pre-trial agreements or concessions, but pled not guilty and the matter was litigated fully. I conclude that the third part of the test meets the criteria for the application of collateral estoppel.

The conclusion that it is appropriate to apply collateral estoppel does not end the inquiry, however. It is necessary to review the substantive evidence to determine whether the government's evidence raises security concerns, and whether Applicant met his burden of persuasion in overcoming the government's evidence and establishing that it is in the best interest of the United States that he be granted a security clearance.

Applicant's criminal history, as alleged in SOR ¶¶ 1.a. and 1.b., raises concerns under AG ¶ 31(a), AG ¶ 31(c), and 31(d) of the criminal conduct adjudicative guideline. AG ¶ 31(a) reads: "a single serious crime or multiple lesser offenses." AG ¶ 31(c) reads: "allegation or admission or criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted." AG ¶ 31(d) reads: "individual is currently on parole or probation."

Three Criminal Conduct mitigating conditions might apply to Applicant's case. If "so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," AG ¶ 32(a) might apply. If there is "evidence that the person did not commit the offense," then AG ¶ 32(c) might apply. If "there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive involvement," then AG ¶ 32(d) might apply.

The record fails to establish that a court-martial determined that Applicant committed intentional aggravated assault on the service member he charged into on the basketball court in 2002. I conclude that AG ¶ 32(c) applies in mitigation to the facts alleged at SOR ¶ 1.b.

Applicant was convicted of 11 merged counts of possession of child pornography in March 2007. He was sentenced to supervised probation for three years, until March 2010. He was still serving his probation when the record closed.

At his DOHA hearing, despite being convicted of child pornography, Applicant continued to deny responsibility for his criminal conduct, which occurred approximately five years ago. While his conduct was not recent, his failure to acknowledge responsibility raises concerns about a failure of rehabilitation. *See* ISCR Case No. 08-03620 (App. Bd. May 6, 2009). Applicant's unwillingness to acknowledge his criminal conduct also casts doubt on his reliability, trustworthiness, and good judgment. I

conclude that AG ¶ 32(a) and AG ¶ 32(d) do not apply in mitigation to Applicant's criminal conduct.

Guideline D, Sexual Behavior

AG ¶ 12 explains why sexual behavior is a security 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. . . .

The SOR alleged that Applicant's criminal convictions for misdemeanor possession of child pornography also raised security concerns under the sexual behavior adjudicative guideline.

The SOR allegations raise security concerns under AG ¶¶ 13(a), 13(c), and 13(d). AG ¶ 13(a) reads: "sexual behavior of a criminal nature, whether or not the individual has been prosecuted." AG ¶ 13(c) reads: "sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress." AG ¶ 13(d) reads: "sexual behavior of a public nature and/or that reflects lack of discretion or judgment."

Applicant's possession of child pornography was sexual behavior of a criminal nature which made him vulnerable to coercion, exploitation, or duress. Moreover, Applicant's possession of child pornography reflected a lack of discretion and judgment.

AG ¶ 14 lists four possible mitigating conditions that could apply to sexual behavior that raises security concerns. Applicant's disqualifying sexual behavior occurred in 2005, and in March 2007, he was convicted of 11 merged counts of possession of child pornography. Despite his conviction, Applicant continues to deny that he possessed child pornography, even though a search of his residence resulted in investigators finding numerous images of child pornography.

AG ¶ 14(b) might apply if "the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." AG ¶ 14(c) might apply if "the behavior no longer serves as a basis for coercion, exploitation, or duress." As a mature adult, Applicant continued to deny his criminal sexual behavior, knowing it was not minor, so remote in time, so infrequent, or had occurred under such unique circumstances that it would not seriously impact his eligibility for a security clearance. His denials cast doubt on his current reliability, trustworthiness, and good judgment. Additionally, his denials raise concerns that his sexual behavior may serve as a basis for coercion, exploitation, or duress in the future. I conclude that AG ¶¶ 14(b) and 14(c) do not apply. I also conclude that the other two

sexual behavior mitigating conditions, AG ¶¶ 14(a) and 14(d), are not raised by the facts of this case.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

> (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 extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature adult who is respected and appreciated by his family members, friends, supervisors, and co-workers. They find him to be sensible, responsible, and trustworthy. These perspectives suggest successful rehabilitation.

Applicant was convicted of possession of child pornography, which was found during a search of his residence. Applicant argued that the child pornography belonged to his housemate. He had an opportunity to fully litigate the charges against him. After his conviction, he continued to deny that he had possessed child pornography and argued that the pornography belonged to his housemate. I conclude that, in this administrative adjudication, the doctrine of collateral estoppel applies to Applicant's state court conviction on 11 charges of misdemeanor possession of child pornography.

Applicant's denial of responsibility for the conduct for which he was convicted raises continuing concerns about lack of rehabilitation and vulnerability to coercion. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his criminal conduct and sexual behavior.

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 J:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	For Applicant
Paragraph 2, Guideline D:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

_____
Joan Caton Anthony
Administrative Judge