



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



In the matter of:)
)
-----) ISCR Case No. 09-02710
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: William F. Savarino, Esq.

May 17, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the government’s security concerns arising from his viewing of pornography on a work-issued laptop computer. Clearance is granted.

Statement of the Case

On July 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines D, Sexual Behavior, E, Personal Conduct, and M, Use of Information Technology Systems. 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.

DOHA received Applicant’s answer to the SOR on August 12, 2009, admitting all of the allegations except SOR subparagraph 2.b. He initially requested an administrative determination, but then asked for a hearing after retaining an attorney.

The case was assigned to me on December 7, 2009. On December 28, 2009, a notice of hearing was issued scheduling the case for January 27, 2010. The hearing was conducted as scheduled. I received four Government exhibits, the File of Relevant Material (FORM) that Department Counsel prepared before Applicant decided to request a hearing,¹ the testimony of Applicant, and four witnesses for Applicant. The transcript was received on February 12, 2010.

Findings of Fact

Applicant is a 32-year-old married man with no children. He graduated from college in 2001 with a degree in marketing. Since 2007, Applicant has worked for a defense contractor in the information technology field. He specializes in developing software programs that model human behavior in decision-making processes. He is the director of business operations and predictive analysis. Applicant's supervisor characterized his work quality as exceptional. (Tr. 72, 73, 75, 86)

Applicant worked for another defense contractor from 2001 to 2007. The particular division where Applicant worked focused on wargame modeling and simulation. (Tr. 50; GE 3 at 13) Applicant worked under the same supervisor during his entire stint with the previous employer. His former supervisor described him as a good worker.

While working for his former employer, Applicant held a Top Secret clearance with access to Sensitive Compartmented Information (SCI). During a January 2005 polygraph examination, Applicant revealed that he viewed pornography on his work-issued laptop computer multiple times between 2001 and 2004. None of the pornography involved children. Approximately 60 percent of these episodes occurred while on business travel, 30 percent occurred at home, and 10 percent occurred at the office. Approximately once every three to four months while viewing pornography in the office, Applicant would masturbate. (GE 3 at 10; Tr. 92-94, 137)

Applicant shared his office with two other coworkers. His episodes of masturbation occurred late in the evening when he was alone after his other coworkers had departed. (Tr. 96) Also, he would lock the door and close the blinds. (Tr. 97)

Applicant's misuse of his work-issued laptop computer violated the company's policies and core values. He was provided a copy of the company human resource policy regarding computer-use ethics when he began working there. (GE 4; Tr. 55, 64)

Applicant viewed pornography on his work-issued laptop computer once while his investigation for SCI access was pending. (Tr. 115) He was on business travel at the time.

¹I marked it as Hearing Exhibit (HE) 1.

In August 2005, the Government denied Applicant's security clearance and SCI access. (Tr. 103) Applicant then told his supervisor of his inappropriate use of his work-issued laptop computer. His employer withdrew his laptop computer privileges and counseled him, but did not fire him. (Tr. 60)

Applicant continued to work another 18 months for his employer. (Tr. 128) Although Applicant's eventual departure was not under duress, his advancement opportunities had been limited because of his misconduct. (Tr. 65) His supervisor was "sorry to see him go." (Tr. 52)

Applicant has been fascinated with online pornography since high school. (Tr. 25) At some point during college, Applicant became ashamed of his inability to reconcile his intense religious convictions with his interest in pornography, and tried to stop. (GE 3 at 10) His efforts were unsuccessful. In the summer of 2002, Applicant disclosed his problem with pornography to his then-girlfriend and current wife.

In 2003, Applicant joined a church-based support group focused on lust-related challenges. According to Applicant's former roommate, the group leader, Applicant was the most "up front" about his problem and encouraged other group members to disclose issues with which they were struggling. Applicant and the group leader are "accountability partners" who contact each other any time they feel tempted to engage in activities such as viewing pornography. (Tr. 44-45)

In 2004, Applicant organized his own church-based support group. It has the same focus as the group in which he participated in 2003. All of the participants in both support groups know of Applicant's misconduct. Also, Applicant told his parents, his in-laws, his pastor, and his current supervisor of his misconduct. (Tr. 77, 108-110) His pastor counseled him for approximately one year after Applicant got married. (Tr. 113, 142)

Applicant has not looked at any pornography either on his work or his home computer since getting married in 2005. (Tr. 20) Now that he is married, he spends more time with his wife and his physical compulsion to view pornography is not as strong. Applicant is occasionally tempted to view pornography. He deals with this temptation by avoiding any mass media that display women as objects. For example, if he is watching television, and sees something inappropriate, "he is quick to change the channel." (Tr. 30)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AG lists potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors

listed in the adjudicative process. 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.”

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 as to obtaining a favorable security decision.

Analysis

Guideline D, Sexual Behavior

Under this guideline, “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.” (AG ¶ 12) Applicant began watching online pornography in high school. Despite feeling ashamed of this habit and attempting to stop approximately four years later, while in college, he was unable. At its nadir, Applicant’s compulsion to view pornography caused him, on approximately eight occasions between January 2003 and October 2004, to masturbate in the office while viewing online pornography on his work computer. AG ¶¶ 13(c), “sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress,” and 13(d), “sexual behavior of a public nature and/or that reflects lack of discretion or judgment,” apply.

Applicant confronted his problem proactively over the years, attending a church-support group, organizing another church support group, and receiving pastoral counseling. He discussed his problem openly with the other support group participants, and worked to develop strategies to control his pornography compulsion.

Applicant also discussed this problem openly with his wife, as early as 2002, when they were dating. He has not looked at any pornography in nearly five years. Through his counseling, he has gained a keen understanding of the link between the objectification of women in popular culture and the objectification of women in pornography. Consequently, he avoids both types of media. AG ¶ 14(c), “the behavior no longer serves as a basis for coercion, exploitation, or duress,” applies.

Guideline E, Personal Conduct

Applicant's conduct "raise[s] questions about [his] reliability, trustworthiness, and ability to protect classified information." (AG ¶ 15) Specifically, the disqualifying conditions set forth in AG ¶ 16(e), "personal conduct, or concealment of information about one's conduct that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing," applies.

For the reasons set forth in the previous section, AG ¶¶ 16(d), "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur," and 16(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress," apply.

Guideline M, Use of Information Technology Systems

This concern is set forth in AG ¶ 39, as follows:

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, firmware, and data used for the communication, transmission, processing manipulation, storage, or protection of information.

Applicant's use of his work-issued laptop computer to view online pornography violated the company's policy governing the use of computers, which he received when he was first hired. AG ¶ 40(e), "unauthorized use of a government or other information technology system," applies.

Although Applicant viewed pornography on his work-issued laptop once after his 2004 polygraph examination, he has not viewed any pornography in nearly five years. This passage of time combined with his comprehensive efforts at rehabilitation, as described above, trigger the application of AG ¶ 41(a), "so much time has elapsed since the behavior happened . . . that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment."

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the 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.

Applicant's use of a work-issued laptop computer to view pornography and his decision to masturbate in the office while viewing pornography represent serious episodes of misconduct. The seriousness of the conduct was compounded when Applicant used the work-issued laptop computer to view pornography on one additional occasion after his original disclosure during a polygraph examination.

Applicant was in his early to mid-twenties when this conduct occurred. He has immersed himself in counseling, seeking to understand and control the nature of his compulsion. Although he did not stop viewing pornography immediately upon engaging in counseling, he appears to have internalized the lessons learned from the counseling, having not viewed any pornography in nearly five years. Also, his maturation, in tandem with the passage of time that has elapsed since the conduct occurred, together with his credible, introspective testimony, are significant indicators of the presence of rehabilitation.

Applicant's wife, parents, in-laws, supervisor, close friends, and members of his faith community know of his past struggle to combat his pornography compulsion. Consequently, the potential for pressure, coercion, exploitation, or duress is minimal.

Under Appeal Board jurisprudence, "the more serious or long-term an applicant's conduct is, the stronger the evidence of rehabilitation needs to be for the Judge to find the applicant has overcome the negative security implications of that conduct." (ISCR Case No. 94-0964 at 6 (App. Bd. Jul. 3, 1996) I conclude Applicant has met this threshold, and the likelihood of recurrence is minimal. Applicant has mitigated the security concerns.

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 D:	FOR APPLICANT
Subparagraphs 1.a - 1.b:	For Applicant

Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.b:	For Applicant
Paragraph 3, Guideline M:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge