



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



In the matter of: )  
)  
) ISCR Case No. 10-10482  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Raashid Williams, Esq., Department Counsel  
For Applicant: *Pro se*

October 6, 2011

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline D, Sexual Behavior, and Guideline E, Personal Conduct. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On June 8, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines D and E. 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on June 29, 2011, and requested a hearing before an administrative judge. The case was assigned to me on August 4, 2011. DOHA issued a Notice of Hearing on August 12, 2011. I convened the hearing as scheduled on

September 7, 2011. The Government offered Exhibits (GE) 1 through 4, which were admitted into evidence without objections. Applicant and one witness testified on his behalf. He offered Exhibit (AE) A which was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 15, 2011.

### **Findings of Fact**

Applicant admitted all of the allegations in SOR except ¶ 2(a). I incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 30 years old. He married in 2009 and has no children. He earned a bachelor's degree in 2003 and a master's degree in 2011. He worked for a federal contractor from 2003 to 2006. During this time, he held a top secret security clearance with access to sensitive compartmented information until it was revoked in 2006.<sup>1</sup>

In 1997, as a teenager, Applicant began viewing pornography on his home computer. He admitted that he downloaded 500 to 600 files a day. He continued downloading and viewing pornography from 1997 to 2006. He downloaded and viewed all different genres of pornography. He downloaded some type of pornography every single day during this time period. He admitted that he was aware when he was downloading pornography that some of it was child pornography. In the beginning, he was not targeting or searching for child pornography. However, he admitted that about every eight to ten months he specifically used search words to find child pornography. He did not have a specific interest in children, but it was just another aspect of pornography that he viewed. He admitted he viewed the child pornography files he downloaded. He explained that the quantity of child pornography he downloaded and viewed was small compared to the total number of other pornographic files he was downloading and viewing. Although he knew his conduct was wrong and illegal, he did not consider it serious.<sup>2</sup> He was not aware it was a felony. He admitted that he downloaded hundreds of thousands of pornographic files that included movies. He estimated that from 1997 to 2006, he downloaded about 50 to 100 pornographic files that included children ages 10 to 13 and 15 to 30 pornographic files that included children ages 4 to 5. He estimated that he viewed about 30 to 40 pornographic files of the 10-to 13-year-old children and 10 to 20 pornographic files of 4-to 5-year-old children. He admitted he became sexually aroused by the content.<sup>3</sup>

Applicant held a top secret security clearance and worked for a government contractor from 2003 to 2006. In 2006, prior to taking a polygraph for a security clearance upgrade, Applicant disclosed to the government investigator that he viewed all types of pornography. He wanted the investigator to understand that his pornography

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<sup>1</sup> Tr. 38-40.

<sup>2</sup> Tr. 33-38, 40-53, 66, 72-73.

<sup>3</sup> Tr. 26-27, 30-32, 46-53, 75-83.

was not limited to one particular genre. He did not explicitly tell the investigator that he accessed, downloaded, and viewed child pornography. He told the investigator that his actions occurred from 1997 to 2006.<sup>4</sup>

It is alleged that Applicant failed to disclose to the investigator that in 2006 his security clearance was revoked because he had accessed, downloaded, and viewed child pornography. I find Applicant was aware that his security clearance was revoked as a result of that conduct. He received a letter from the government agency that was conducting the polygraph and it specifically noted the concerns about the child pornography files that he downloaded and viewed. However, I find that Applicant did disclose he was involved in “all” types of pornography. I found Applicant’s testimony credible that he did not deliberately conceal that his security clearance was revoked due to viewing child pornography. I find that stating “all” types of pornography logically includes child pornography. The government was on notice that Applicant admitted he viewed “all” types of pornography. After Applicant’s pre-polygraph interview, he disclosed his past pornography issues to his wife. She was unaware of his activities before then.<sup>5</sup>

Applicant’s security clearance was revoked in 2006. He stated he sought therapy from a doctor in October 2006. He was unaware of the doctor’s credentials, but believed he was a psychologist. He saw the doctor twice a month for three to four months and then once a month until he discontinued therapy in June 2007. The doctor helped him humanize and personify the people he viewed in the pornographic movies and images and see them as victims. He stated he was told by the doctor that they had talked through the issues and that he could continue to see the doctor if Applicant felt he needed to. Applicant was not provided a diagnosis and he discontinued seeing the doctor. He did not provide any medical documents or specific information or credentials from his doctor.<sup>6</sup>

Applicant has not told his parents about his history of downloading, accessing, and viewing all types of pornography, including child pornography. He used their home computer to access the pornography, and deleted the files so his parents would not discover his behavior. His sister is four years younger than him and she was living at home when he was downloading the files. He stated he has no hesitation about telling his parents about downloading pornography. Applicant stated he no longer downloads illegal files. He stated it has been more than five years since he last downloaded illegal files. He does not intend to download or view child pornography or any pornography in the future.<sup>7</sup>

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<sup>4</sup> Tr. 53-65.

<sup>5</sup> Tr. 25-26, 29-32, 87-96, 102-105; GE 3, 4.

<sup>6</sup> Tr. 24-25, 28, 83-87, 106-109.

<sup>7</sup> Tr. 28, 67-69, 97.

Applicant's wife testified on his behalf. After his interview with the polygrapher, Applicant told his wife about downloading and viewing all types of pornography, including child pornography. She was shocked and surprised when he confessed his past habits of viewing pornography, including child pornography. It was before they were married. She told him they needed to see a therapist because she did not know if she could trust him. She attended one counseling session with Applicant. She stated Applicant went to see the therapist upon her request. She stated she was told by the doctor that Applicant did not have a problem. She explained that the doctor told her Applicant was not personalizing the people in the pornography. She discussed the issues with her mother and decided to forgive Applicant. She believes Applicant is a good man. She was concerned about the issue recurring. She explained that Applicant no longer downloads any illegal files from the internet. Applicant has been devoted to her even when she went through brain surgery before they were married. She believes in her heart that his behavior will not be an issue. She holds a top secret security clearance with access to sensitive compartmented information.<sup>8</sup>

Applicant provided a character letter from his supervisor. He is aware that Applicant downloaded and viewed child pornography. He does not condone his actions, but commented that Applicant was forthright in admitting his conduct. He provided information that Applicant is a top-notch performer, who has not demonstrated any behavior that would cause him to question his loyalty to his employer or country.<sup>9</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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, these guidelines are applied 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

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<sup>8</sup> Tr. 28-29, 98, 109-122.

<sup>9</sup> AE A.

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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct;

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other government representative; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging activities which, if known, may affect the person's personal, professional, or community standing.

Applicant told the government investigator that his security clearance was revoked because he accessed and downloaded all types of pornography. Although he did not specifically state that this included child pornography, I find it is a reasonable inference and he did not deliberately conceal material facts from the investigator. I find disqualifying condition AG ¶¶ 16(a) and 16(b) do not apply with regard to SOR ¶ 2.b. Applicant's long and involved history of accessing, downloading, and viewing child pornography from 1997 to 2006 is a personal conduct concern and creates a vulnerability to exploitation, manipulation, and duress. I find AG ¶ 16(e) applies to the facts of this case.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(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

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's illegal conduct of accessing, downloading, and viewing child pornography on his home computer from 1997 to 2006 is serious criminal and personal conduct that raised a security concern. He testified that his conduct ceased in 2006. He stated he sought counseling from a doctor, but he did not provide sufficient evidence to document his treatment, therapy, or prognosis. He did not provide sufficient evidence of the qualifications of the therapist. He stated it has been five years since his last offense. Due to the duration and excessiveness of Applicant's conduct and his disregard for the illegalities of his actions, I cannot find his conduct occurred under such unique circumstances that it is unlikely to recur. I find his actions cast serious doubt on his reliability, trustworthiness, and good judgment. Therefore, AG ¶ 17(a) does not apply.

Applicant's parents are unaware of his illegal activity, as was his wife before their marriage. Although he acknowledged his conduct, stated he obtained counseling to change his behavior, and no longer downloads any type of pornography, there is insufficient independent evidence to corroborate his assertions. Absent such evidence, I cannot find that his conduct is unlikely to recur or that he has reduced his vulnerability to exploitation, manipulation, and duress. AG ¶¶ 17(d) and 17(e) do not apply.

#### **Guideline D, Sexual Behavior**

AG ¶ 12 expresses the security concern pertaining to sexual behavior.

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.

AG ¶ 13 describes conditions that could raise a security concern and may be disqualifying. I have considered the following as potentially applicable:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (b) a pattern of compulsive, self-destructive, or high risk behavior that the person is unable to stop or that may be symptomatic of a personality disorder; and
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.

Applicant estimated that from 1997 to 2006, he downloaded between 50 and 100 pornographic files that included children, ages 10 to 13, and 15 to 30 pornographic files that included children, ages 4 to 5. He estimated that he viewed about 30 to 40 pornographic files of the 10-to 13-year-old children and 10 to 20 pornographic files of 4- to 5-year-old children. I find the above disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising under the sexual behavior guideline. The following mitigating conditions under AG ¶14 are potentially applicable:

- (a) the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;

(b) 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;

(c) the behavior no longer serves as a basis for coercion, exploitation, or duress; and

(d) the sexual behavior is strictly private, consensual, and discreet.

Applicant's behavior of downloading and viewing child pornography extended from adolescence into adulthood. He was aware that his conduct was wrong and illegal. The frequency and seriousness of his conduct casts doubt on his current reliability, trustworthiness, and good judgment. His repeated behavior was criminal, but not prosecuted. However, it still serves as a basis for coercion, exploitation, and duress. I find AG ¶¶ 14(a), 14(b), and 14(c) do not apply. Although it appears Applicant's conduct was strictly private, it was criminal and therefore AG ¶ 14(d) is not applicable.

### **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 relevant 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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines D and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant was candid in disclosing that he downloaded and viewed child pornography. He told his wife about his past conduct, but has not told his parents. Applicant's conduct spanned a nine-year period. He was aware that his conduct was criminal, but did not realize his offenses could be prosecuted as felonies. He stated he sought treatment, and he does



not need further therapy. He did not provide any evidence to substantiate his treatment or assertions that he does not pose a risk of repeating similar behavior. There is no evidence to document the qualifications of his therapist. It is clear Applicant had a pornography addiction which included child pornography. Although he stated he has learned to humanize the people in the photos he viewed, he lacks an understanding of the gravity of the seriousness of his behavior. I find that his repeated and extensive behavior is not mitigated by the passage of time, by his assertion that he has changed and no longer views any type of pornography, or by his contention that the issues have been resolved. Applicant was entrusted with a security clearance from 2003 to 2006. During that time, he repeatedly downloaded and viewed child pornography. He stated he stopped his misconduct, but it was not until he had to take a polygraph. I find Applicant did not meet his burden of persuasion. Overall, the record evidence leaves me with substantial questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guidelines for Sexual Behavior and Personal Conduct.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge