



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 11-01756

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: Richard Murray, Esquire

05/22/2012

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding sexual behavior. Eligibility for a security clearance and access to classified information is granted.

**Statement of the Case**

On June 24, 2010, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions version of a Security Clearance Application (SF 86).<sup>1</sup> On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on May 25, 2011.<sup>2</sup> On another unspecified date, DOHA issued him a set of interrogatories. He responded to those interrogatories on September 23, 2011.<sup>3</sup> DOHA issued a Statement of Reasons (SOR) to him on January 11, 2012, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February

<sup>1</sup> Government Exhibit 1 (SF 86, dated June 24, 2010).

<sup>2</sup> Government Exhibit 4 (Applicant’s Answers to Interrogatories, dated May 25, 2011).

<sup>3</sup> Government Exhibit 3 (Applicant’s Answers to Interrogatories, dated September 23, 2011).

20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guidelines D (Sexual Behavior) and E (Personal Conduct), and detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on January 20, 2012. In a sworn statement, dated February 8, 2012, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on March 14, 2012, and the case was assigned to me on March 16, 2012. A Notice of Hearing was issued on April 5, 2012, and I convened the hearing, as scheduled, on May 2, 2012.

During the hearing, four Government exhibits (GE 1 through 4) and four Applicant exhibits (AE A through D) were admitted into evidence without objection. Applicant and one witness testified. The transcript (Tr.) was received on May 10, 2012.

### **Rulings on Procedure**

At the commencement of the hearing, Department Counsel moved to amend the SOR by deleting certain allegations. Specifically, she moved to withdraw SOR ¶¶ 1.d., 2., 2.a., and 2.b. There being no objection, the motion was granted.<sup>4</sup>

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted one of the factual allegations (¶ 1.b.) as well as a portion of one other factual allegation (¶ 1.c.) of the SOR. Applicant's admissions are incorporated herein as findings of fact. He denied the remaining allegation (¶ 1.a.) as well as the remaining portion of one other factual allegation (¶ 1.c.) of the SOR. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 27-year-old employee of a defense contractor who, since January 2009, has been serving as an associate professional staff I.<sup>5</sup> He has never served in the U.S. military.<sup>6</sup> He was granted a secret security clearance in 2008, but subsequent applications for a top secret security clearance with access to sensitive compartmented

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<sup>4</sup> Tr. at 9-10.

<sup>5</sup> Government Exhibit 1, *supra* note 1, at 10; Government Exhibit 4, *supra* note 2, at 3.

<sup>6</sup> Government Exhibit 1, *supra* note 1, at 18.

information (SCI) with another agency or department were denied in 2009.<sup>7</sup> His secret security clearance was suspended in 2010.<sup>8</sup>

Applicant followed his June 2003 high school graduation with enrollment at a domestic university from August 2003 until December 2009 and attendance at a foreign university for two summer months each in 2004 and 2005. He obtained a B.S. degree in computer science in May 2007, and an M.S. degree in computer science in December 2009.<sup>9</sup>

A seasonal lifeguard and swim instructor during his last two years in high school, he also held a number of university and part-time positions while attending college.<sup>10</sup> Applicant joined his current employer in May 2008, and served for three months as a technical aide, before assuming his current position.<sup>11</sup>

Applicant has never been married,<sup>12</sup> but has cohabited with his girlfriend since May 2010.<sup>13</sup>

## **Sexual Behavior**

Commencing in about 2001, when he was 16 years of age and in high school, and continuing until he graduated from high school in 2003, when he was 18 years of age, Applicant downloaded to his computer from Napster and other peer-to-peer file sharing applications, music, movies, computer games files, as well as nude images and pornographic videos of what he believed to be prepubescent girls in provocative

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<sup>7</sup> Government Exhibit 1, *supra* note 1, at 24. In October 2009, a clearance decision statement (CDS) was issued against Applicant alleging criminal conduct, sexual behavior, and personal conduct pertaining to his previous downloading of music, movies, and computer game files, as well as nude images and pornographic videos of underage females. No mitigation was found, and he was deemed ineligible for access to SCI. See Government Exhibit 4 (CDS from another department or agency, dated October 8, 2009), attached to Applicant's Answers to Interrogatories, *supra* note 2. Applicant filed a written appeal of the initial decision to the deputy chief of the adjudications division in December 2009, and in March 2010, the initial decision was sustained. See Government Exhibit 4 (First Appeal Review, dated March 20, 2010), attached to Applicant's Answers to Interrogatories, *supra* note 2. In April 2010, Applicant filed a written appeal to the Access Appeals Panel (AAP) of the decision of the deputy chief of the adjudications division. In November 2010, that appeal was denied and the earlier decisions were sustained. See Government Exhibit 4 (Decision of AAP, dated November 18, 2010), attached to Applicant's Answers to Interrogatories, *supra* note 2.

<sup>8</sup> Government Exhibit 1, *supra* note 1, at 24. Applicant's security clearance was suspended based upon the action taken by the other department or agency. See Government Exhibit 4 (Letter, dated May 28, 2010), attached to Applicant's Answers to Interrogatories, *supra* note 2.

<sup>9</sup> Government Exhibit 1, *supra* note 1, at 9.

<sup>10</sup> Government Exhibit 1, *supra* note 1, at 12, 15.

<sup>11</sup> Government Exhibit 1, *supra* note 1, at 10.

<sup>12</sup> Government Exhibit 1, *supra* note 1, at 19.

<sup>13</sup> Government Exhibit 1, *supra* note 1, at 19.

poses.<sup>14</sup> He estimated the girls depicted in the images were generally underage and between 11 and 18<sup>15</sup> because many were “underdeveloped” and did not appear to have any pubic hair.<sup>16</sup> There were “indications of at least the start of puberty for a majority of the images” he viewed.<sup>17</sup> Aside from the appearance of the women in the images, Applicant did not know for a fact that they were underage.<sup>18</sup> Applicant sought out those images and videos because he wanted to view females that were “around” his same age for the purposes of masturbation in the privacy of his own room.<sup>19</sup> The motivation behind his actions was that it was a period of Applicant’s “natural curiosity” about the female form during sexual development, because, at that time, he never had a girlfriend,<sup>20</sup> had never seen a nude female, and had never had sexual relations.<sup>21</sup>

Applicant continued to regularly view the downloaded images throughout the remainder of his high school years as well as a few times during his freshman year of college.<sup>22</sup> The summer following his freshman year in college, Applicant studied a foreign language in a foreign university, and at the end of his trip, he engaged in sexual relations (with a prostitute) for the first time. He was 19 or 20 years old when he stopped viewing the images.<sup>23</sup> Following that experience, Applicant no longer had the curiosity or desire to view the downloaded images.<sup>24</sup> After Applicant graduated from high school, he never went online to view any child pornography.<sup>25</sup>

When Applicant started downloading the images in question, he was not technically able to view the image until after it was downloaded. Upon viewing some of them he deleted those in which he had no interest.<sup>26</sup> Those images that were retained on a compact disk might have been copied as part of his routine backing-up of his

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<sup>14</sup> Tr. at 28-30, 47-48, 53-54; Government Exhibit 4 (Report, dated August 28, 2009), at 2, attached to Applicant’s Answers to Interrogatories, *supra* note 2.

<sup>15</sup> Government Exhibit 3 (Summary of Information Changes, undated), attached to Applicant’s Answers to Interrogatories, *supra* note 3. Applicant also speculated that some of the girls may have been approximately 10 to 12 years of age. See Government Exhibit 4, *supra* note 14, at 2.

<sup>16</sup> Government Exhibit 4, *supra* note 14, at 2.

<sup>17</sup> Tr. at 57.

<sup>18</sup> Tr. at 79.

<sup>19</sup> Government Exhibit 4, *supra* note 14, at 2; Tr. at 45-48, 56.

<sup>20</sup> Tr. at 74.

<sup>21</sup> Tr. at 32, 74.

<sup>22</sup> Applicant’s Answer to the SOR, dated February 8, 2012; Tr. at 30-31, 54, 58.

<sup>23</sup> Tr. at 33; Government Exhibit 4, *supra* note 14, at 2.

<sup>24</sup> Tr. at 34.

<sup>25</sup> Tr. at 60.

<sup>26</sup> Tr. at 50.

computer files.<sup>27</sup> Applicant forgot about the images until shortly before he was interviewed during the security clearance review process in 2009.<sup>28</sup> He was searching among his two desktop computers and two laptop computers at his residence for a document and unintentionally came upon some nude female images.<sup>29</sup> He discussed his newly rediscovered images with the interviewer, and indicated it was time for him to “do a little spring cleaning on his computers by deleting all of the underage, pornographic videos, and images.”<sup>30</sup> Sometime between August 2009 and December 2009, Applicant physically destroyed the compact disk containing the images and searched throughout his computers and hard drives to locate and delete any remaining “questionable material” that he had.<sup>31</sup> He is ashamed of his conduct pertaining to the underage nude images,<sup>32</sup> and has no intention of participating in such activities in the future.<sup>33</sup> Applicant has never been charged by the police with possession of child pornography.<sup>34</sup>

### Character References

Applicant met the woman who would become his girlfriend in March 2009, and they have since entered into “an extremely close, committed, loving relationship.”<sup>35</sup> They are “best friends” and do everything together.<sup>36</sup> They are sexually active with each other.<sup>37</sup> He told her of the issues pertaining to child pornography after the interview with the other agency or department.<sup>38</sup> They share computers, and she has seen no evidence of child pornography since they have resided together.<sup>39</sup> Applicant’s girlfriend considers him to be very loyal, dependable, trustworthy, and honest.<sup>40</sup>

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<sup>27</sup> Tr. at 53.

<sup>28</sup> Tr. at 61.

<sup>29</sup> Tr. at 61-62; Government Exhibit 4, *supra* note 14, at 2.

<sup>30</sup> Government Exhibit 4, *supra* note 14, at 2.

<sup>31</sup> Tr. at 38, 69, 84; Government Exhibit 2 (Affidavit, dated July 28, 2010), at 5.

<sup>32</sup> Tr. at 75-76.

<sup>33</sup> Government Exhibit 2, *supra* note 2, at 9.

<sup>34</sup> Tr. at 80; Government Exhibit 2, *supra* note 2, at 8.

<sup>35</sup> Tr. at 35.

<sup>36</sup> Tr. at 90.

<sup>37</sup> Tr. at 93-94.

<sup>38</sup> Tr. at 92.

<sup>39</sup> Tr. at 93.

<sup>40</sup> Tr. at 95-96.

Applicant's immediate supervisor and second-level supervisor, as well as his friends, were informed of the child pornography issues by Applicant. Nevertheless, as to his coworkers, they have known him since he started working for them, and they support his application for a security clearance. They have characterized him in highly favorable terms: trustworthy, thoughtful, reliable, dependable, dedicated, and respected.<sup>41</sup> Two social friends, a husband and wife, have known Applicant since 2008, and they both believe he is a kind and gentle soul and a man of integrity, who is reliable and trustworthy.<sup>42</sup> They have no reservations regarding having Applicant at their home interacting with their children.<sup>43</sup>

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."<sup>44</sup> 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>45</sup>

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

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<sup>41</sup> Applicant Exhibit A (Character Reference, dated April 25, 2012); Applicant Exhibit C (Character Reference, dated April 27, 2012).

<sup>42</sup> Applicant Exhibit B (Character Reference, dated April 26, 2012); Applicant Exhibit D (Character Reference, dated April 28, 2012).

<sup>43</sup> Applicant Exhibit B, *supra* note 42; Applicant Exhibit D, *supra* note 42.

<sup>44</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>45</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

In the decision-making process, facts must be established by “substantial evidence.”<sup>46</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.<sup>47</sup>

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>48</sup>

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”<sup>49</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

## Analysis

### Guideline D, Sexual Behavior

The security concern relating to the guideline for Sexual Behavior is set out in AG ¶ 12:

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<sup>46</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>47</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>48</sup> *Egan*, 484 U.S. at 531

<sup>49</sup> See Exec. Or. 10865 § 7.

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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 13(a), “*sexual behavior of a criminal nature, whether the individual has been prosecuted*” is potentially disqualifying. Similarly, under AG ¶ 13(c), “*sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress*” may raise security concerns. In addition, “*sexual behavior of a public nature and/or that reflects lack of discretion or judgment*” is potentially disqualifying under AG ¶ 13(d). Applicant’s history of downloading and viewing nude images and pornographic videos of what he believed to be prepubescent girls in provocative poses between 2001 and 2003 or 2004, is documented in his statements, affidavit, answer to the SOR, his answers to interrogatories, and the evidence, including his testimony, presented during the hearing. Applicant’s behavior would appear to be of a criminal nature, it reflected a lack of discretion or judgment, and it made him vulnerable to coercion, exploitation, or duress. AG ¶¶ 13(a), 13(c), and 13(d), apply.

The guidelines also include examples of conditions that could mitigate security concerns arising from sexual behavior. Under AG ¶ 14(a), the disqualifying condition may be mitigated where “*the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature.*” AG ¶ 14(b) may apply where “*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.*” If “*the behavior no longer serves as a basis for coercion, exploitation, or duress,*” it is potentially mitigating under AG ¶ 14(c). Similarly, if “*the sexual behavior is strictly private, consensual, and discreet,*” AG ¶ 14(d) may apply.

AG ¶ 14(a) applies. As noted above, during a period of self-discovery and natural curiosity, commencing in about 2001, when he was 16 years of age and in high school, and continuing until he graduated from high school in 2003, when he was 18 years of age, Applicant downloaded to his computer from Napster and other peer-to-peer file sharing applications, nude images and pornographic videos of what he believed to be prepubescent girls in provocative poses. He continued to regularly view the downloaded images throughout the remainder of his high school years as well as a few times during his freshman year of college. In other words, he continued to view the previously downloaded images until he was about 19 or 20 years of age. AG ¶ 14(a) does not offer a definition of the word “adolescence,” so I have referred to a standard definition of the word. “Adolescence” is defined as:<sup>50</sup>

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<sup>50</sup> Mosby's Pocket Dictionary of Medicine, Nursing, & Allied Health 29 (2nd ed., Mosby 1994).



. . . the period in development between the onset of puberty and adulthood. It usually begins between 11 and 13 years of age with the appearance of secondary sex characteristics and spans the teen years, terminating at 18 to 20 years of age with the acquisition of completely developed adult form. During this period, the individual undergoes extensive physical, psychologic, emotional, and personality changes.

Applicant's sexual behavior occurred during that period of his life where self-discovery and natural curiosity about the female body near his age was of significant importance to him. Since his first sexual encounter with a female during his summer studies program overseas, there has been no evidence of subsequent conduct of a similar nature.

AG ¶ 14(b) applies. The sexual behavior pertaining to the downloading of the images occurred over nine years ago and has not been repeated since that period. The sexual behavior pertaining to the viewing of the images is alleged to have occurred from 2001 to 2004 – approximately between 8 and 11 years ago, generally on a weekly or monthly basis, before it ceased. The viewing generally ceased once Applicant experienced his first sexual encounter. Considering his subsequent evolvment and sexual and emotional maturity, as well as his current committed relationship with his girlfriend, the sexual behavior is unlikely to recur and does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

AG ¶ 14(c) applies. Now that Applicant's immediate and second-level supervisors, his girlfriend, and their friends, as well as the Government are aware of his sexual behavior from his past, that sexual behavior no longer serves as a basis for coercion, exploitation, or duress.

AG ¶ 14(d) applies. Applicant's downloading and viewing of the images took place in a private and discreet location – his bedroom – and was not openly broadcast to others. No criminal action was ever proposed or taken against him for his actions.

One additional comment is necessary related to two aspects of Applicant's sexual behavior: his accidental or inadvertent viewing of the images in 2009 when he again discovered them in his computer, and his failure to delete the images from his computers until 2009. Applicant contended he had forgotten that the images had remained on his computer (or on a compact disk) after he ceased viewing them, and it was not until he was looking for a document in 2009 that he came across them. It is the position of the Government that Applicant knowingly and intentionally retained, searched for, and viewed, those images. Applicant denied the allegations.

I had ample opportunity to evaluate the demeanor of Applicant, observe his manner and deportment, appraise the way in which he responded to questions, assess his candor or evasiveness, read his statements, and listen to his testimony. It is my impression that his explanations are consistent. Considering the quality of the other evidence before me, most of which emanated directly from Applicant, they have the solid resonance of truth. I find Applicant's explanations are credible in his denial of

deliberately knowingly and intentionally retaining, searching for, and viewing, those images. There is some concern, however, that once those images were rediscovered, they were not immediately deleted or destroyed by him. Applicant failed to understand the significance of those images at that time, but shortly thereafter did so, and the images were deleted or destroyed in 2009 – three years ago. Even if his sexual behavior were not mitigated under AG ¶ 14, it would be mitigated under the whole-person concept, *infra*.

### **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.

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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>51</sup>

There is some evidence against mitigating Applicant's sexual conduct. Applicant downloaded to his computer various peer-to-peer file sharing applications, nude images and pornographic videos of what he believed to be prepubescent girls in provocative poses. He regularly viewed the downloaded images throughout the remainder of his high school years as well as a few times during his freshman year of college, or until he was about 19 or 20 years of age. He failed to delete or destroy those images until 2009. (See AG ¶ 2(a)(8).)

The mitigating evidence under the whole-person concept is more substantial. Applicant's sexual behavior occurred during his adolescence and there is no evidence of subsequent conduct of a similar nature. There is no evidence of a personality disorder: Applicant is in an extremely close, committed, loving relationship with his girlfriend; they do everything together and are sexually active with each other; they share computers, and she has seen no evidence of child pornography since they have

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<sup>51</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

resided together. Applicant's girlfriend, his supervisors, as well as his friends, were informed of the child pornography issues by Applicant. They have all characterized him in highly favorable terms. Two social friends, a husband and wife, have no reservations regarding having Applicant at their home interacting with their children. Applicant's conduct was not openly or indiscreetly engaged in. No criminal action was ever proposed or taken against him for his actions. He has sexually and emotionally matured, and the sexual behavior is unlikely to recur. Under the evidence presented, I have no questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### **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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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.

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ROBERT ROBINSON GALES  
Administrative Judge