



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 ----- ) ISCR Case No. 11-12400  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Braden Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

02/26/2013

**Decision**

Harvey, Mark, Administrative Judge:

In 2006, Applicant lied to his employer about parking in patient parking, and he resigned in lieu of termination from his employment. In 2008, Applicant viewed pornography on his employer’s laptop computer and was terminated from employment. He intentionally falsified his April 22, 2008 Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). In 2011, he lied to an Office of Personnel Management (OPM) investigator, who was conducting his personal subject interview (PSI). Sexual behavior concerns are mitigated; however, personal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 22, 2008, and May 5, 2011, Applicant submitted his SF 86s. (GE 1, 3) On August 31, 2012, the Department of Defense (DOD) issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) the President promulgated on December 29, 2005.

The SOR alleged security concerns under Guidelines D (sexual behavior) and E (personal conduct). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

On September 12, 2012, Applicant responded to the SOR. (HE 3) On December 4, 2012, Applicant requested a hearing. (Tr. 16; HE 3) On December 21, 2012, Department Counsel indicated he was ready to proceed on Applicant's case. On January 7, 2013, the case was assigned to me. On January 11, 2013, DOHA issued a hearing notice, setting the hearing for February 7, 2013. (HE 1) Applicant's hearing was held as scheduled. Department Counsel offered three exhibits, and Applicant offered 15 exhibits. (Tr. 24-34; GEs 1-2; AE A-O) There were no objections, and I admitted GE 1-3 and AE A-O. (Tr. 28, 34) Additionally, I admitted the hearing notice, SOR, and Applicant's response to the SOR. (HE 1-3) On February 15, 2013, I received the transcript of the hearing.

### **SOR Amendment**

During his opening statement, Applicant volunteered that he was dishonest about being fired on his 2008 SF 86 because he was "a man without a job and I was afraid, and I was embarrassed and ashamed." (Tr. 21) I approved Department Counsel's request to defer until later in the hearing the issue of whether the SOR should be amended to include an allegation of falsification of his 2008 SF 86. (Tr. 22-23) Section 22 of Applicant's April 22, 2008 SF 86 asks whether in the last seven years Applicant has "[q]uit a job after being told you'd be fired;" "[l]eft a job by mutual agreement following allegations of misconduct;" and "[l]eft a job for other reasons under unfavorable conditions." (GE 3 at 23) Applicant answered, "no" to these questions. (Tr. 60; GE 3 at 23) Applicant explained, "I was unemployed and I wanted a job and I wasn't thinking of the consequences when I submitted that answer as no. I was afraid that if I told the truth, that I would be blackballed and my opportunity to work would be dismissed based upon the truth." (Tr. 61)

In response to the questions on his May 5, 2011 SF 86 about ending employment under adverse circumstances, Applicant disclosed the adverse ending of his employments in 2006 and 2008. (Tr. 60-61; GE 1) He admitted that he lied when he failed to disclose that he left employment in 2006 and in 2008 after allegations of misconduct surfaced against him. (Tr. 61)

Department Counsel made a motion to amend the SOR to add subparagraph 2.c, indicating that Applicant made a false statement on Section 22 of his April 22, 2008 SF 86 by not disclosing he was fired or left employment under adverse circumstances in 2006 and 2008. (Tr. 72-73; GE 3) Applicant was offered an opportunity to have 15 days delay to address the SOR amendment, and Applicant elected to proceed with his case

without receiving additional time. (Tr. 74-75) I approved Department Counsel's request to amend the SOR.<sup>1</sup>

### **Non-SOR allegation**

Applicant volunteered during a discussion of Department Counsel's exhibits that he did not provide accurate information during his May 26, 2011 OPM PSI concerning opening and briefly viewing his supervisor's email concerning Applicant's employment. (Tr. 25-27; GE 2) The OPM PSI reads, "[Applicant] was suspected of opening an email belonging to his supervisor . . . although [Applicant] did not do it, [he] believes that this may have also contributed to the eventual dismissal." Applicant admitted he made this statement to the OPM investigator. (Tr. 77) He said he "accidentally opened that message." (Tr. 37, 78) He "saw enough to realize [his] job was at risk;" however, he denied that he "read that email." (Tr. 38, 77) The SOR was not amended to encompass the allegation that Applicant lied to the OPM investigator on May 26, 2011 during his PSI.<sup>2</sup>

### **Findings of Fact**

Applicant's SOR response admitted with explanations the underlying factual predicate for all of the SOR allegations. (HE 3) He also provided extenuating and mitigating information. (HE 3) He denied that the allegations raised or established security concerns. His admissions are accepted as findings of fact.

Applicant is a 42-year-old network engineer employed by a defense contractor. (Tr. 5, 39; GE 1) He has never served in the military. (Tr. 7; GE 1) In 1989, he graduated from high school. (Tr. 6) In 1996, he was awarded a bachelor's degree in kinesiology or physical education. (Tr. 6, 39) In 1994, he married, and he does not have any children. (Tr. 39; GE 1) He has held a security clearance for five years. (Tr. 8)

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<sup>1</sup>The Appeal Board has stated that an "SOR may be amended at the hearing in order to render it in conformity with the evidence or for other good cause." ISCR Case No. 09-07219 at 4-5 (App. Bd. Sep. 27, 2012) (citing ISCR Case No. 07-08119 at 8 (App. Bd. July 8, 2010)).

<sup>2</sup>Applicant's SOR does not allege that he lied to the OPM investigator on May 26, 2011 when he denied that he opened his supervisor's email. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 09-07219 at 4-5 (App. Bd. Sep. 27, 2012) (stating same). Consideration of this non-SOR allegation is strictly limited to these five circumstances.

From 1997 to about March 2006, Applicant was employed at a hospital in information technology. (Tr. 39-40, 54) He parked in areas reserved for patients on about five occasions. (Tr. 41) In 2006, his supervisor questioned him about parking in areas reserved for patients in violation of the hospital's rules. (Tr. 41) Applicant lied to his supervisor about violating this parking rule. (Tr. 41-42; SOR ¶ 2.b) Applicant said that his manager "knew the truth. He saw me exit the vehicle." (Tr. 41)<sup>3</sup> Applicant confessed that he had violated parking rules. (Tr. 41) Applicant's employer threatened him with termination unless he resigned, and Applicant chose to resign. (Tr. 40-42) Applicant was unemployed after leaving his hospital employment for about two months. (Tr. 43)

From about May 2006 to about April 2008, Applicant was employed at a manufacturing firm in information technology. (Tr. 43, 54; GE 3) In February 2008, Applicant had a company-issued laptop computer, which he was permitted to use at home. (Tr. 44) His personal laptop computer and his employer's laptop computer were very similar in appearance. (Tr. 48) He and his spouse argued, and she left their residence to stay with her mother. (Tr. 45) Applicant consumed a substantial amount of beer, and he became intoxicated. (Tr. 45) His employer's laptop was already on and the browser was open. (Tr. 78) He typed the address for the pornography site into his employer's laptop computer. (Tr. 81) He accidentally viewed pornography on his employer's laptop computer instead of his personal computer. (Tr. 45, 48, 81) The office IT system detected his accessing of pornography. (Tr. 45) When he returned to the office, his supervisor confronted Applicant about accessing pornography with his employer's laptop computer, and Applicant admitted accessing pornography. (Tr. 46) His employer terminated him for viewing pornography on his employer's laptop computer. (Tr. 48-50; SOR ¶¶ 1.a and 2.a; SOR response) Applicant was aware that using his employer's laptop computer to access pornography was a serious rule violation, and Applicant emphasized that he would never intentionally violate this rule. (Tr. 49-50)

SOR ¶¶ 1.b and 2.a allege that Applicant was addicted to pornography until at least May 2011, and he concealed this addiction from his spouse. There was no medical or psychiatric diagnosis of addiction. (Tr. 83) Applicant began looking at Playboy magazine in high school; gradually his viewing of pornography escalated; and Applicant opined that he was addicted to viewing pornography. (Tr. 51, 61) He disclosed his obsession with pornography to his spouse and parents. (Tr. 61-64, 68) He attended group therapy, marriage counseling, and men's group at his church to help him manage his lust, which he believed was the source of his obsession with pornography. (Tr. 64-65, 69, 85) These factors have enabled him to suppress his urge to view pornography. (Tr. 64-65, 69, 85) He has not viewed pornography for two or three months prior to his hearing. (Tr. 66)

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<sup>3</sup>Applicant's father said Applicant's employer took a picture of Applicant's vehicle parked in patient parking, asked him about parking there, and then after Applicant lied, he produced the picture of Applicant's vehicle in patient parking to induce his confession. (Tr. 82)

## Character Evidence

Applicant emphasized that he loved his employment and having an opportunity to support the Navy and Marine Corps. (Tr. 35) He would never betray his country or intentionally violate national security. (Tr. 35) In the last three years, he received three awards. (Tr. 46; AE A) He was employee of the year. (Tr. 46) His performance reviews for the past three years have been “fabulous” or outstanding. (Tr. 76; AE C, M, N, O) He received thanks for excellent work from grateful customers over the years. (AE A, D-L) Applicant’s father’s statement, performance evaluations, and numerous emails from customers, coworkers, and supervisors establish that he is a dedicated, diligent, and responsible person. (Tr. 76; AE A, D-L) He is remorseful about the allegations in the SOR. He is a model employee. (Tr. 76)

## 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 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 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.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

### **Analysis**

Upon consideration of all the facts in evidence, the SOR, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines D (sexual behavior) and E (personal conduct).

### **Sexual Behavior**

AG ¶ 12 describes 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 lists four conditions that could raise a security concern and may be disqualifying including:

(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 sexual behavior that the person is unable to stop or that may be symptomatic of a personality disorder;

(c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and

(d) sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

Applicant has a strong urge to view pornography. He was ashamed of this conduct and tried to hide it from his spouse and parents. In 2008, he was terminated from employment for viewing pornography on his employer's laptop computer. AG ¶¶ 13(b) and 13(c) apply.

AG ¶ 14 provides four conditions that could mitigate security concerns including:

(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.

AG ¶¶ 14(b), 14(c), and 14(d) apply. An employee's use of an employer's laptop computer is controlled by the employer's rules and restrictions, and an employer can lawfully discipline an employee for violating computer-use rules and restrictions. Private viewing of adult pornography on a personal laptop computer or other privately-owned media is protected conduct under the First Amendment and the liberty interest of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. See *Lawrence v. Texas*, 539 U.S. 558 (2003)(discussing right to engage in private, consensual sexual behavior); *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803 (2000) (discussing adult pornography and First Amendment). Applicant's addiction to pornography raised a security concern when he became subject to coercion or duress through his concern that his behavior might be disclosed to his parents and spouse. After he received the SOR, Applicant disclosed his interest in pornography to his parents and spouse.

Applicant's viewing of pornography is private and discrete (except for the occasion in 2008 when it was detected by his employer). He has also received therapy and counseling, and his ability to control this urge has been enhanced. He is unlikely to use his employer's computer to access pornography in the future, and his sexual behavior does not serve as a basis for coercion or duress. His sexual behavior involving viewing adult pornography in the privacy of his home does not cast doubt on his current

reliability, trustworthiness, and good judgment. Sexual behavior security concerns are mitigated.

## **Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to 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.

Five personal conduct disqualifying conditions under AG ¶ 16 are potentially applicable. Those five disqualifying conditions provide:

(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 official government representative;<sup>4</sup>

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

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<sup>4</sup>The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).



(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of . . . or rule violations; 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 in activities which, if known, may affect the person's personal, professional, or community standing. . . .

AG ¶¶ 16(a) and 16(b) apply. The Government produced substantial evidence that Applicant lied when he responded to Section 22 of his April 22, 2008 SF 86, which asks whether in the last seven years Applicant has “[q]uit a job after being told you’d be fired;” “[l]eft a job by mutual agreement following allegations of misconduct;” and “[l]eft a job for other reasons under unfavorable conditions.” He answered, “no” to these questions. He did not disclose that in 2006, he was asked to resign after he lied about parking in parking spaces reserved for patients, and in 2008, he was terminated from employment for accessing pornography on his employer’s laptop computer. He lied on his April 22, 2008 SF 86 because he was unemployed and believed that if he told the truth, he would not be hired.

AG ¶ 16(c) does not apply. There is sufficient credible adverse information under AG ¶¶ 16(b), 16(d), and 16(e) for an adverse determination.

AG ¶ 16(d) applies. In 2008, Applicant violated rules when he accessed pornography using a company computer.

AG ¶ 16(e) applies. When Applicant frequently viewed pornography, he engaged in conduct which adversely affects his personal, professional, and community standing. He was anxious that his spouse and parents not learn about his viewing pornography. Further analysis concerning applicability of mitigating conditions is required.

Four mitigating conditions under AG ¶ 17 are potentially applicable:

(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;

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

(f) the information was unsubstantiated or from a source of questionable reliability.

The personal conduct allegations in SOR ¶ 2.a duplicated the sexual behavior allegations in SOR ¶¶ 1.a and 1.b. The scope of his security-related conduct is thoroughly addressed under Guideline D and the Whole-Person Concept, *infra*. As such, SOR ¶ 2.a is found for Applicant as a duplication of SOR ¶¶ 1.a and 1.b. I do not believe Applicant could be coerced or pressured into release of classified information by threats of public disclosure of his addiction to pornography or his false statement on his April 22, 2008 SF 86.

The other SOR allegations in SOR ¶¶ 2.b and 2.c are that in 2006, he intentionally provided false information about parking in patient's parking to his employer, and in 2008, he failed to disclose that he left employment under adverse circumstances in 2006 and 2008 in order to obtain employment. In addition, on May 26, 2011, he told an OPM investigator that he did not open an email belonging to his supervisor. Applicant opened the email and viewed enough of the email to determine it related to his employment. His false statements are not isolated; his statement on May 26, 2011 is recent; and his false statements, especially on his April 22, 2008 SF 86, are serious. Personal conduct concerns are not mitigated.

### **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. I have incorporated my

comments under Guidelines D and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) warrant additional comment.

There are some facts supporting mitigation of security concerns under the whole-person concept; however, they are insufficient to fully mitigate security concerns. Applicant is a 42-year-old network engineer employed by a defense contractor. In 1989, he graduated from high school, and in 1996, he was awarded a bachelor's degree in kinesiology. He has held a security clearance for five years, and there are no allegations of security violations. Applicant's father, performance evaluations, and numerous emails from customers, coworkers, and supervisors, describe him as responsible, reliable, conscientious, diligent, and very positive in his outlook towards problem solving. He received therapy to address his urges to view pornography, and his viewing of pornography on his employer's computer was an accident. He was intoxicated and confused about which computer he was using, and he actually intended to use his own computer. I do not believe he will view pornography on a Government or employer-owned computer in the future. He has the ability and maturity to comply with security requirements. He is an intelligent person, who understands the importance of compliance with security rules. His admissions that he made false statements in 2006, 2008, and 2011, and his evident remorse are important steps towards rehabilitation and mitigation of security concerns.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant made false statements in 2006, to his employer about parking in patient parking; on his 2008 SF 96, about ending his employment under adverse circumstances in 2006 and 2008; and in 2011, to the OPM investigator about opening and viewing his supervisor's email. Accurate information in a security context is crucial to national security. His false statements show lack of judgment and raise unresolved questions about Applicant's reliability, trustworthiness, and ability to protect classified information.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude sexual behavior concerns are mitigated; however, personal conduct concerns are not mitigated. For the reasons stated, I conclude he is not eligible for access to classified information.

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

## Conclusion

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

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Mark Harvey  
Administrative Judge