



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



In the matter of:)	
)	
)	ISCR Case No. 11-14131
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

04/25/2013

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on January 5, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on October 10, 2012, detailing security concerns under Guideline D, sexual behavior, and Guideline E, personal conduct. 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on October 22, 2012, and he answered it on November 5, 2012. Applicant requested a hearing before an administrative judge with

the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on January 28, 2013, and I received the case assignment on January 30, 2013. DOHA issued a Notice of Hearing on February 14, 2013, and I convened the hearing as scheduled on February 27, 2013. The Government offered exhibits (GE) marked as GE 1 through GE 3, which were received and admitted into evidence without objection. Applicant and one witness testified. He submitted exhibits (AE) marked as AE A through AE I, which were received and admitted into evidence. AE C was admitted subject to verification and authentication. DOHA received the hearing transcript (Tr.) on March 12, 2013. I held the record open until March 21, 2013, for Applicant to submit additional matters. Applicant timely submitted AE J - AE AA, which were received and admitted without objection. The record closed on March 21, 2013.

Procedural and Evidentiary Rulings

Notice

Applicant received the notice of the date, time and place of the hearing on February 21, 2012, less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant affirmatively waived this right under the directive. (Tr. 9.)

Evidentiary ruling

Department Counsel objected to the admission of AE C on the grounds that the letter was not dated or signed. AE C was admitted conditioned upon Applicant obtaining verification and authentication of the letter. Post-hearing, Applicant submitted verification from the letter's author that the letter was written in 2010 by him. The author signed his verification, and Department Counsel has not objected to the verification. AE C is admitted.¹

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 2.a, 2.b, and 2.d of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 2.c of the SOR. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 56 years old, works as a certified welder and mechanical technician for a DOD contractor. Applicant has worked for his employer continuously since 1980. He has held a security clearance since 1988, without any violations of security procedures. Because of the issues raised in this case, Applicant lost his

¹AE C; AE Q; Department Counsel's Response to Applicant's supplemental information; Tr. 15.

sensitive compartmented information (SCI) clearance in December 2010. Applicant acknowledged the loss of his SCI clearance on his e-QIP in January 2011.²

Applicant submitted a copy of his performance reviews for the years 2005 through 2007 and 2009 through July 2012. He received high marks for his work skills, knowledge, and teamwork skills. His supervisors consider him the resident expert in all welding matters. He strives for exactness in his work and produces outstanding quality and craftsmanship in his work. He takes ownership of his assignments and increases his knowledge of the work. He mentors junior technicians and is sought by engineers because of his work quality and ethic. Applicant received several awards, letters of appreciation, and letters of recognition from his employer.³

Applicant submitted six letters of recommendation from supervisors, engineers, and coworkers. None of the letters indicate any knowledge about the issues raised in the SOR. However, the senior manager (AE R) knows about the issues in the SOR. (AE Q) The individuals praise Applicant's work skills, knowledge, expertise, reliability, honesty, and dependability. They consider him a man of high integrity and trustworthy. His excellent welding skills give his senior manager the flexibility to assign Applicant to a variety of different jobs to meet program needs. One test engineer expressed being stunned that Applicant lost his clearance because he views Applicant as a person with a high moral fiber. He recommends Applicant without reservation for a security clearance.⁴

Applicant graduated from high school. He and his wife married in 1975. They have two sons, ages 31 and 25. They also have two 19-year-old foster sons, who live with them.⁵

The issues raised in the SOR concern Applicant's sexual behavior. Applicant believes his problems with pornography and addiction to pornography are the result of sexual abuse as a child and his introduction to pornography at the age of 9. His parents separated several times and ultimately divorced when he was a child. The emotional impact of his childhood resulted in issues of abandonment. He described his drugs of choice to deal with these emotional issues as pornography and masturbation.⁶

From 1980 until 1997, Applicant had no access to a computer at work. Since 1997, he enters his work time on a desk top computer, including a laptop which is set up as a desktop computer. His employer has not assigned him a laptop computer, nor has he ever taken a laptop computer home. Human resources and his manager verified

²AE O; Tr. 14.

³AE F; AE J - AE L; AE Z.

⁴AE P - AE V; AE Y.

⁵GE 1; GE 2; Tr. 24.

⁶SOR; Tr. 26-27.

that, as a hourly employee, he would not be, nor had he been, assigned a laptop computer to use. His manager verified that he would have access to a common computer in a kiosk. His employer provides laptops to engineers who travel and to managers who work at home. His employer does not allow employees to bring electronics, such as cell phones, recording devices, into the work building.⁷

Applicant acknowledged that he accessed pornography websites on desktop computer stations at work sporadically, not continually or regularly, and that he knew it was against company rules to do so. He also frequented adult book stores, which is not an issue here, when he needed to view pornography.⁸ Applicant defined his pornography viewing as two types: 1) hard-core pornography, which involved sexual acts, and 2) soft porn and inappropriate material. He described soft porn as nudity, advertisements for a masseuse or prostitutes, and inappropriate material as suggestive photographs which he found on a website for sales and personal services.⁹ Applicant's pornography viewing at work began around 1999. He last looked at hard-core pornography at work or anywhere in 2002 after deciding he should not be doing this. His sporadic review of soft porn and suggestive photographs on work desktop computers continued until 2009.¹⁰

Applicant submitted a summary page from his background investigation, which discusses his pornography viewing habits. He disputed the information on the summary page in a letter dated January 3, 2011 and at the hearing. Applicant specifically raised this issue because the report from the background investigator stated that he viewed and downloaded pornography on a weekly basis using a laptop computer he brought home from work four or five years earlier. Applicant denied this information because he did not have access to a company computer or laptop, and because he never brought a company computer home. He also did not have access to his wife's laptop computer at home. He also denied that he accessed pornography on work computers between 2002 and 2009 and disagrees with the 500 times indicated in the report.¹¹ He again acknowledged accessing work computers until 2002 for hard-core pornography. After that, he viewed suggestive pictures and advertisements on a website for sales and personal services periodically. Applicant admitted that he wrongly engaged in this activity at work, but disagreed with the dates and number of times.¹²

⁷AE A; AE C; AE Q; Tr. 28-32.

⁸There is no evidence Applicant ever hired prostitutes nor has he ever admitted to hiring prostitutes.

⁹I take administrative notice of the fact that the website for sales and personal services has been criticized for allowing prostitutes and other individuals to advertise for sexual services.

¹⁰AE I; Tr. 33, 42-43, 75-76, 81-85, 92.

¹¹When asked by the polygraph operator about the number of times he viewed pornography, he indicated that he did view pornography many times in 1999 and 2000. He could not be specific, but agreed that his viewing was more than 10 times, more than 100 times, less than 1000 times, and maybe up to 500 times. Tr. 39-42.

¹²AE A; AE I; Tr. 36-42, 71-75, 81-82.

Applicant acknowledged his conduct to his wife, who suggested he tell his boss about his actions. In 2005, Applicant voluntarily reported to his managers that he accessed various on-line sites, including pornography sites. Applicant also advised his manager that he had ceased this activity. His manager counseled him verbally as he considered Applicant's conduct a first-time offense. Applicant's second-line manager agreed with the discipline. Applicant's manager had no further problem with this behavior by Applicant.¹³

In early 2010, an employee reported to management that Applicant viewed pornography websites, mischarged his work time, and lacked interpersonal skills when he refused to perform tasks as requested. Human Resources investigated the allegations. His manager addressed this investigation in a 2010 letter. Applicant's manager advised that the hardware operations require monitoring and an individual must be present at all times for the safety of the hardware, while only taking readings every 30 or 60 minutes, which Applicant was assigned to perform. Applicant's manager described Applicant's misuse of the computer as playing games and solitaire on the computer in between recording the readings. After a two-month investigation, Human Resources instructed Applicant's manager to verbally counsel Applicant not to play solitaire or other nonwork-related games, which was done. His manager has not observed any further conduct. The investigation did not reveal any issues with pornography sites on the work computers, as alleged. Human Resources closed its case.¹⁴

Applicant's pornography activities created problems in his marriage. Applicant and his wife agree that around their 25th wedding anniversary, they experienced severe problems in their marriage. His wife researched information and sought help. She eventually contacted a Dr. W and spoke with him. Dr. W presented a program at their church, which Applicant and his wife attended. During this presentation, Applicant became aware that he might have a sexual addiction problem. Applicant and his wife met with Dr. W for a time. She also counseled with Dr. W separately for several months. Dr. W, whose professional credentials are unknown, eventually told her that Applicant was a sex addict. The basis for his statement is not known, but it is appeared to be based on his conversations with her. His wife indicated that she and her husband also met with a family and marriage counselor, but the time frame for this meeting(s) is unknown.¹⁵

In 1999 and 2000, when he started viewing pornography again after refraining for a period of time, Applicant spoke with his church pastor and a brother deacon about his conduct, both of whom responded "Don't worry about it. That's normal." He doesn't believe they understood his problem, which contributed to his later decision to leave this church. He discussed his issues with a pastor at his next church, who advised him to

¹³AE C; AE Q; Tr. 158.

¹⁴AE B; AE C; AE Q; Tr. 158-160.

¹⁵Tr. 92, 108-112, 115-116, 160-163.

pray and the thoughts would go away. He attended a third church, which did not provide any help. He stated that he began to flounder and returned to the adult bookstores.¹⁶

By 2000, he agreed to attend marriage counseling with his wife because he believed that his pornography issues created problems in their marriage. He described this time as when he began his recovery. Around this time, he attended the program presented by Dr. W at his church. In 2001, he met once with a retired psychologist, who recommended a recovery program operated by Christian churches. Applicant attended this program from 2001 until July 2003. This recovery program employs an operational format similar to Alcoholics Anonymous. Meetings are held once or twice a week and a 12-step recovery goal is set. He stopped attending this program because he believed that his pornography and sexual addiction problems has been eradicated as suggested to him.¹⁷

Applicant described a cycle of behavior. He views pornography, then tells his wife. He attends counseling programs. He then stops attending counseling when he thinks he can manage his addiction on his own. Eventually, an event occurs, triggering his desire to view pornography. He views the pornography again. He recalls speaking with three telephone counselors through Dr. W's program over time. He and the first counselor, J, talked for about six months about Applicant's addiction to pornography. Applicant stopped because of cost and his belief he could control his behavior. He talked with a second associate of Dr. W at some point about his desires to view pornography. This counselor eventually left the program. Applicant again tried to manage on his own. In 2008, he slipped again. He sought help from a third counselor, Mr. C. Mr. C is a LPC (licensed professional counselor) and SRT (sexual recovery therapist). Applicant counseled with Mr. C over the telephone, twice individually, and ten times in group counseling as recommended. Mr. C diagnosed Applicant with sex addiction. Applicant does not remember being diagnosed with sex addiction¹⁸ by anyone else, but acknowledges his addiction to pornography as the reason for his counseling. Applicant ceased his contact with Mr. C in December 2008 because he found the sessions ineffective.¹⁹

Applicant did not seek counseling with anyone for a year. On the recommendation of his brother-in-law, he met with Ms. B, who discussed marriage and parental issues with him for about four months. He no longer meets with her because he does not have a need to revisit his childhood problems. He returned to the church-based recovery program in the fall of 2012 and currently attends meetings twice a week. Licensed counselors are not involved in this program. After participating in this program, Applicant realizes that his recovery must be ongoing as he will always be a recovering

¹⁶Tr. 87-90.

¹⁷AE B; Tr. 92, 104-112.

¹⁸The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR), 2000, does not list sex addiction as a mental or psychological disorder.

¹⁹AE AA; Tr. 46-48, 110-115, 122-127.

sex addict. He admits that he needs to be in some type of recovery program for the rest of his life.²⁰

Applicant obtained a letter from Mr. C, dated March 7, 2013, which verified Applicant's counseling in 2008. Applicant provided a copy of the medical information report generated during his background investigation. The investigator prepared this one-page report of the interview of Mr. C on June 23, 2009. The report indicates an initial diagnosis of sex addiction, lists the treatment prescribed, opines that Mr. C found no illegal activity by Applicant, and notes continued counseling is recommended as Applicant had an addiction to pornography.²¹

Applicant acknowledged that he masturbated at work in a work restroom. This conduct last occurred in late 2000 or early 2001. He explained that sometimes he used a single bathroom, where he locked the door to prevent anyone else from entering the room, and that other times he used a stall in a bathroom with several stalls. He denied masturbating in front of anyone, and he repeatedly denied any conduct between 2002 and 2009, as indicated in the background investigation report. In his recovery program, he set parameters where he would not allow himself to view pornography or masturbate. Work was a boundary, and he has not violated his boundary. He never worried about being caught for masturbating at work because he did this conduct in private.²²

Applicant stated that he benefitted from the recovery programs and that the programs helped him to control his behavior. He also indicated that he is being treated for depression, low testosterone, erectile dysfunction, and has been for five or six years.²³

When Applicant completed his e-QIP on January 5, 2011, he answered "No" to the question in Section 21 about emotional or mental health counseling in the last seven years. He did not need to list counseling related to marriage, grief not related to violence by him, or family. Applicant denied intentionally falsifying this answer and explained that because his pornography viewing created problems in his marriage and his counseling started because of his marital issues, he believed he did not need to answer the question in the affirmative as he did not understand at that time his conduct was an addiction. Throughout the hearing, Applicant acknowledged that he did receive counseling for his sex addiction problem.²⁴

²⁰AE D; Tr. 129-132.

²¹AE AA.

²²AE A; Tr. 45-46, 93, 97-99.

²³Tr. 47, 102-104.

²⁴GE 1; Tr. 53-55, 133-134, 137-138.

At a party before the 2008 election, Applicant and his brother-in-law talked about general political topics. Because of commentary in the news media about weapons of mass destruction and President Bush's knowledge of the existence of these weapons, conversation turned to this topic. In a private moment, Applicant mentioned to his brother-in-law that at a work meeting, an analyst showed information that indicated that something was going on in Iraq. Applicant said "You know it's not true what you read in the news. There was plenty of evidence that - - that certainly convinced everybody where I work . . ." and "I've seen evidence that would convince the average person that there was a reason to go in there." Applicant denied discussing the specifics of the information he saw. After the party, he told his wife he may have said too much. His brother-in-law wrote a letter on April 10, 2011 stating that he did not recall a discussion at a party about weapons of mass destruction. He indicated that he would have recalled anything "shocking" or breaching national security. He also stated that Applicant has never revealed any classified information to him. He trusts Applicant with our national security.²⁵

Applicant's wife testified and submitted additional comments after the hearing. She describes Applicant as "very good man" who is kind, honorable, loving, and caring although not a model husband. He has a strong sense of duty and love of the United States. She knows about his pornography habits, which she believes adversely impacted their marriage. She caught him searching the home computer for pornography on one occasion between 10 and 15 years ago. She attached a monitor to their computer and has not noticed any additional pornography searches. Applicant knows about the monitor. She advises that he feels a lot of guilt about his behavior. He will tell her about any inappropriate conduct related to pornography because "his conscience will bother him." She strongly advocates that he is not nor will he ever be a threat to the United States. She advises that he taken responsibility for his pornography activities and for any other conduct. He has changed in the last 10 years. She confirms his counseling for his sex addiction.²⁶

Applicant's younger son wrote a letter on his behalf. He described his father as a hard-working, dedicated employee with a tender heart. At times, his father's long work hours took away from his time with his family. He is aware of Applicant's addiction. He does not "see his father setting aside his loyalty to God, family and country for the sake of hiding himself from the consequences of his addiction." He indicated that his father is forthcoming about his conduct and accepts the consequences of his actions. He affirms that his father is attending counseling sessions twice a week and accepts his illness.²⁷

²⁵GE 2; AE M; Tr. 55-62.

²⁶AE W; Tr. 147-162.

²⁷AE X.

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 on the evidence contained in the record.

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 applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline D, Sexual Behavior

AG ¶ 12 expresses the security concern as:

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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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 visited pornography websites on his office computer from 1999 to 2002 and a website for sales and personal services for suggestive advertisements on work computers from 2002 until 2009. He also masturbated in work bathrooms a few times ending by early 2001. AG ¶¶ 13(c) and 13(d) apply.

The Sexual behavior guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 14(a) through 14(d), and the following are potentially applicable:

(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; and

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

AG ¶¶ 14(b) and 14(c) apply. An employee's use of an employer's 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, on other privately-owned media, or in adult bookstores 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 self-claimed addiction to pornography raised a security concern after he acknowledged to his employer around 2005 that he had viewed pornography websites on office computers several years earlier and when he self-reported this conduct to the Government. His employer orally counseled him not to access pornography websites, but took no other disciplinary action based on Applicant's conduct.

In 2000, Applicant realized his marriage had problems, and after viewing videos prepared by Dr. W and after marital counseling with his wife, he understood that his pornography viewing created a problem in his marriage. He contacted three ministers or deacons to discuss his concerns about this conduct. None of them gave him any helpful advice on managing his conduct. In 2001, Applicant began a counseling program, which taught him to establish parameters for his conduct. He set viewing hard-core pornography at work as unacceptable conduct for himself and has abided by this parameter he established. He continued to search a website for sales and personal services for suggestive and stimulating advertisements until 2009, when he decided not to continue this behavior. A co-worker complained in late 2009 or early 2010 that, among several issues, Applicant was accessing pornography websites at work. After an investigation, his employer closed the case with the recommendation that his manager orally counsel Applicant about not playing solitaire or games on the work computer. There is no evidence that his employer found that Applicant accessed pornography websites, which supports his statement that he ceased viewing hard-core pornography on the work computer. He has also received therapy and counseling. He recognizes that he is addicted to pornography and that must be vigilant for the rest of his life. He continues with a support group for assistance with maintaining his goal to stay away from pornography.

Applicant's last act of masturbating in the stall of a workplace bathroom occurred by early 2001, about 12 years ago. He has voluntarily ceased this behavior in public places, making it unlikely that he can be coerced or exploited for this conduct. His wife is fully aware of his conduct, so there is no likelihood that he can be pressured to disclose classified information because of it.

Applicant has personally established that viewing pornography and masturbating at work are impermissible behaviors at work. He is unlikely to use his employer's computer to access pornography or to masturbate at work in the future. His sexual behavior does not serve as a basis for coercion or duress. His sexual behavior involving viewing adult pornography in the private places does not cast doubt on his current reliability, trustworthiness, and good judgment. Sexual behavior security concerns are mitigated.

Guideline E, 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.

AG ¶ 16 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are 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;

(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 dishonesty 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, . . . and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

For AG ¶ 16(a) to apply, Applicant's omission must be deliberate. The Government established that Applicant omitted material facts from his January 2011 e-QIP, when he failed to acknowledge his sex addiction counseling. This information is material to the evaluation of Applicant's trustworthiness and honesty. In his response and at the hearing, he denied that he intentionally falsified this answer on his e-QIP with an intent to hide his counseling from the Government. Applicant explained that because his sexual problems created marital problems, he chose not to acknowledge his counseling for sexual addiction because the counseling arose in the context of counseling for his marital problems. Throughout the hearing, Applicant acknowledged that he received counseling on several occasions for sex addiction and discussed the

impact of his behavior on his marriage. When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred. Applicant understood his pornography viewing created problems in his marriage. Throughout the hearing, he intermixed counseling for his addiction to pornography, which he described as a sexual addiction, and counseling for personal and marital issues. He acknowledged his pornography addiction and his counseling for it. He was aware of this counseling and a "yes" answer was more appropriate. Having said this, it is not clear from his testimony that he deliberately and intentionally falsified his answer to this question, as he admitted to the Government and his employer that his SCI clearance had been revoked for sexual behavior and personal conduct. SOR allegation 2.c is found in favor of Applicant.²⁸

The Government established that Applicant violated workplace rules when he accessed pornography websites on his employer's computers between 1999 and 2002, but not that he did so between 2002 and 2009. The Government also established that Applicant sought suggestive advertisements on his employer's computer between 2002 and 2009 and that he masturbated in his employer's bathrooms between 1999 and 2001. AG ¶¶ 16(d)(3) and 16(e) are raised by SOR allegations 2.a and 2.b.

Applicant did not discuss classified information with his brother-in-law at a party. During a conversation about weapons of mass destruction, Applicant mentioned a meeting at work where he saw evidence which convinced him that there were weapons of mass destruction in Iraq. He did not discuss the specifics of what he saw, such as the type of weapons or the locations of these weapons, and his brother-in-law verified that Applicant did not reveal anything "shocking" or a breach of national security. It is well-known that Saddam Hussein used gas, a weapon of mass destruction, to murder thousands of Kurds. Applicant's conversation involved generic information known to the general public and not classified. SOR allegation 2.d is found in favor of Applicant.

The Personal Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 17(a) through 17(g), and the following 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

²⁸See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

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 reduced his vulnerability to exploitation, manipulation, or duress for his past pornography and masturbating conduct when he revealed his conduct to his wife, the Government, and his employer, making it unlikely that anyone can pressure him to reveal classified information for keeping silent about his past sexual behavior. He has not viewed hard-core pornography websites or masturbated at work in more than ten years. Likewise, he has not searched a website for sales and personal services for about four years. Over the last approximately 12 years, Applicant has sought counseling to manage his desires to view pornography. He has received inadequate and sometimes inappropriate responses or guidance. When he realized that his need to view pornography had not been “eradicated” after a resumption of his conduct, he again sought counseling. His counseling sessions helped him to eventually accept and define himself as a sex addict, which he states he will be for the rest of his life. He also understands that he will need to participate in support groups into the future and plans to continue his current support groups. He acknowledged that he has not always remained in counseling, but it was reasonable because he ceased counseling in 2003 as he believed his pornography desires had been “eradicated” and in 2008, because he found the counselor ineffective. He has sought help routinely, but not always got the help he needed. At the present time, he has control over his behavior, and given the many years since he acted inappropriately at work, he is not likely to engage in inappropriate behavior at work in the future. He had mitigated the personal conduct security concerns.

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 an 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. The decision to grant or

deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant clearly acted inappropriately when he accessed pornography websites on office computers and when he masturbated in bathrooms at work between 1999 and 2001. Applicant recognized he had a problem, and he sought guidance and support from several sources. While he did not always receive what he needed, he learned to set parameters for himself. He honored these parameters, which included not accessing pornographic websites at work and no masturbation at work. Over time, he has come to describe himself as a sex addict because of his desire to view pornography, which is not illegal and is protect by the First Amendment. He participates in a support group, which helps him to manage his behavior. His employer, his wife,, and his sons are aware of his conduct. The Government is aware because he told the Government about his actions. In reviewing the evidence as a whole, there is little reason to believe that Applicant can be coerced, exploited, pressured, or placed under duress and in a position to reveal classified information based on his past conduct.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his sexual and personal conduct under Guidelines D and E.

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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	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.

MARY E. HENRY
Administrative Judge