



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



In the matter of:)
)
) ISCR Case No. 23-02490
)
)
 Applicant for Security Clearance)

Appearances

For Government: Troy L. Nussbaum, Esq., Department Counsel
For Applicant: *Pro se*

03/14/2025

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guidelines D (Sexual Behavior), and I (Psychological Conditions). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 20, 2020. On November 27, 2023, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines D and I. The DoD acted under Executive Order (Exec. Or.) 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; DoD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG) (December 10, 2016).

Applicant responded to the SOR on December 13, 2023, and requested a hearing before an administrative judge. The Government amended the SOR on March 15, 2024, and Applicant Answered the amendments on March 15, 2024. The case was assigned to me on September 4, 2024. The Defense Office of Hearings and Appeals (DOHA) issued

a notice of hearing on September 9, 2024, scheduling the hearing for November 20, 2024.

The hearing was held as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. The Government's request for Administrative Notice was marked as Hearing Exhibit (HE) III. Applicant testified and called a witness. DOHA received the transcript on December 2, 2024.

Findings of Fact

In Applicant's amended answer to the SOR, he admitted SOR ¶¶ 1.a, 1.b, and 1.d with mitigating explanations for his conduct. (Tr. 24-25.) He denied SOR ¶¶ 1.c, and 2.a, which were cross allegations on the basis he had matured and changed his habits. His admissions are incorporated in my findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 38 years old. He has been married for over six years. He earned an associate degree in 2007 and a bachelor's degree in 2011. He earned his master's degree in 2015. He has focused his academic studies in information systems and cybersecurity. He was sponsored for his clearance in 2011. His clearance was revoked in 2020 based on the information alleged. He elected to not fight the revocation because he felt like he could move forward without having a clearance with his company, but discovered he would need a security clearance. He was diagnosed with other specified paraphilic disorder and chronic pornography use during his 2023 Government ordered psychological assessment. (GE 1; GE 3; Tr. 19-22, 35.)

Applicant admitted SOR ¶ 1.a which alleges: **From approximately 2001 to 2020, you viewed animated pornography that, at times, depicted underage characters, and depicted themes such as abduction, imprisonment, incest, and rape.** In his Amended Answer he stated:

However, the images I view were fully fictitious in nature and did not describe or depict actuality in any fashion. Furthermore, at that age (age 15) I was unaware that any laws existed with regards to viewing such material. In fact, I was unaware that a law existed (15 U.S.C § 2252) regarding viewing such material until I was confronted by an investigator. Since being confronted by an investigator, I have matured and no longer view questionable illegal animation'

Applicant started viewing pornography at age 15, including *anime genre*. He describes himself as having an extreme sex drive, which caused him to try out all sorts of pornography, including animated porn about toddlers. He once tried to masturbate to something like that and found it totally disgusting and "totally, oh, my God, really awful." He stated based on the feeling afterwards that he never went back to it ever again. He reiterated in his testimony what he told an investigator during his security clearance interview that he believed some of the pornography depicted individuals who were underage based on their attire, mannerisms, environment, verbal queues, and body

composition. He acknowledged he found animated characters that depicted 14-year-olds to be attractive, but affirmed he did not find a 14-year-old real-life human to be attractive and as of the hearing does not find "that stuff any bit attractive anymore." He explained he had no idea that *anime* field too could contain child pornography and it was stupid mistake not understanding the laws. He reported to the psychologist that he viewed pornographic material that contained toddlers in 2011 based on a web search that did not specify underage pornography. He denied being aroused or masturbating to the content. (GE 2, GE 3; Tr. 29-34.)

Applicant admitted amended SOR ¶ 1.b which alleged: **You masturbated in your car in public parking lots while viewing pornographic content on multiple occasions from about 2017 to at least 2020.** Applicant in his Answer to the SOR allegation stated:

However, I was completely clothed, and no one was around. So, there was no form of indecent expos[ur]e. At no point was any of my body exposed to the public. No one was around upon viewing the pornographic material either. Since being confronted by an investigator I have matured and no longer masturbate or view pornographic material outside of my own house.

Applicant reiterated his Answer stating:

However, in the time, I never really exposed myself. I mean, all masturbation was just rubbing my pants in order to get some stimulation. I didn't -- wasn't trying to do anything illegal. (Tr. 35.)

He emphasized he parked far away not near other people. He acknowledged there was the possibility of people walking by and that it was a "stupid thing" for him to do. He testified he did it as a "favor to [his] wife" because he did not want to annoy her all the time by asking for sex. His wife had health issues that impacted their sexual activities. (Tr. 36-37, 40-46.)

Applicant admitted SOR ¶ 1.d which alleged: **You masturbated in public restrooms at various locations, including at your workplace, while viewing pornographic content on multiple occasions from about 2017 to at least 2020.** In his Amended Answer he states:

However, I was in my own stall. There was no indecent exposure. Nor was pornographic material viewable by the public from my stall. Also, I kept the sound off so no one could hear anything whatsoever. Since being confronted by an investigator I have matured and no longer masturbate or view pornographic material outside of my own house.

Applicant testified SOR ¶ 1.d was accurate. He reiterated his Answer that he was inside stalls with the volume off. He argued that on the multiple occasions over the alleged three years he did this that there was no indecent exposure to anybody else around the

restroom because he was inside stalls with the volume off. He acknowledged there were others in the restroom while he masturbated in these public restrooms. (Tr. 46-48.) For both SOR ¶¶ 1.b and 1.d, Applicant testified he believed the trigger for masturbating in his car or in the public restrooms was just being "extremely horny at the time." (Tr. 49.)

Applicant denied amended SOR ¶¶ 2.a cross alleged under 1.c, which alleged: **You were evaluated by a licensed psychologist on May 31, 2023. Based on your clinical interview, available treatment records, testing observations, and results of the Personality Assessment Inventory (PAI), the psychologist determined you met the criteria for Other Specified Paraphilic Disorder, Chronic Pornography Use. The opinion is evidenced by your longstanding consumption of pornography, viewing pornography that depicted criminal acts, and engaging in atypical compensatory behaviors. The psychologist noted that regardless of a specific diagnosis, your judgment reliability, and trustworthiness are not intact and are influenced or affected by underlying psychological factors. You continued to use pornography and behave aberrantly despite having fears of your wife discovering your sexual proclivities and being concerned that such behavior could negatively impact your ability to hold a clearance.** In his Answer he states:

Over time, I have matured with age and changed my habits. Since being confronted by the investigator, I no longer conduct myself in inappropriate matters. I feel that my judgment, reliability, and trustworthiness is in intact. Since being confronted by the investigator, I have been completely honest and confronted my wife about my sexual behaviors and all things happening in my life. I feel that my wife and I have an honest and trustworthy relationship and do not keep things from each other. My wife would even say the same thing upon being asked.

Applicant cited his wife's testimony as demonstrating that he changed completely. She testified he "changed so much for the good." He is family focused, and she was doing everything she could to make sure he takes care of sexual needs at home to make sure that this does not occur again. (Tr. 40-46.) When Applicant now encounters triggers that arouse him, he stated; "I talk to my wife. I bring it up, and we find a means on just trying to get some release." (Tr. 50-51.) He told the investigator during his May 2022 security clearance interview that he and his spouse were communicating a lot better and had found ways to socialize together that had not done so previously. His wife was present during the hearing and during the psychologist's examination of Applicant, which was conducted by video teleconferencing.

The psychologist noted:

[Applicant's] longstanding history and escalation of using pornography, his compensatory behaviors that he engages in to achieve self-gratification, the questionable and potentially criminal level of pornography that he has consumed, his efforts to hide and conceal his activities from his wife, and the efforts he made to seek out his specific pornographic needs are closely

aligned with the criteria of a use disorder. Additionally, he has never been abstinent for a sustained period of time since he began in 2001 which brings into question his claims that he is not responding to any compulsions or impulsive needs to view pornography or to engage in self-gratification. (GE 3.)

The phycologist's prognosis of Applicant was not favorable:

[I]t is the opinion of the Evaluator that the Subject's judgment, reliability, and trustworthiness are not intact and are influenced or affected by underlying psychological factors. This opinion is evidenced by [Applicant's] longstanding consumption of pornography, viewing pornography that depicted criminal acts, and engaging in atypical compensatory behaviors. He could also be responding to compulsive needs and desires which cannot be ruled out due to there being no sustained periods of abstinence. Further, he continued to use pornography and behave aberrantly despite having fears of his wife knowing his sexual proclivities and being concerned that such behavior could negatively impact his ability to hold a clearance. Lastly, there also appears to be an issue of candor as [Applicant's] testimony in the interview did not match with statements contained within his case paperwork. His tendency to minimize and dissemble was also detected by the personality assessment which was invalidated due to high levels of defensiveness.

The formal diagnosis of Other Specified Paraphilic Disorder (chronic pornography use) was issued in May 2023. The diagnosis indicated that Applicant's judgment, reliability, and trustworthiness were not intact due to his condition. (GE 3.)

Administrative Notice

The Government requested I take administrative notice of the Diagnostic and Statistical Manual (DSM)-5 definition of Other Specified Paraphilic Disorder, which was granted. (Tr. 84-85.) The DSM-5 defines Other Specified Paraphilic Disorder as:

This category applies to presentations in which symptoms characteristic of a paraphilic disorder that cause clinically significant distress or impairment in social, occupational, or other important areas of functioning predominate but do not meet the full criteria for any of the disorders in the paraphilic disorders diagnostic class. The other specified paraphilic disorder category is used in situations in which the clinician chooses to communicate the specific reason that the presentation does not meet the criteria for any specific paraphilic disorder. This is done by recording "other specified paraphilic disorder followed by the specific reason (e.g., "zoophilia").

Examples of presentations that can be specified using the "other specified" designation include, but are not limited to, recurrent and intense sexual

arousal involving telephone scatology (obscene phone calls), necrophilia (corpses), zoophilia (animals), coprophilia (feces), klismaphilia (enemas), or urophilia (urine) that has been present for at least 6 months and causes marked distress or impairment in social, occupational, or other important areas of functioning. Other specified paraphilic disorder can be specified as in remission and/or as occurring in a controlled environment.

The unspecified paraphilic disorder category is used in situations in which the clinician chooses not to specify the reason that the criteria are not met for a specific paraphilic disorder and includes presentations in which there is insufficient information to make a more specific diagnosis. (HE III at 705.)

Policies

"[N]o 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 applicants 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 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance 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 (4th 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline D: Sexual Behavior

The concern under this guideline is set out in AG ¶ 12:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission.

Applicant's admissions and evidence admitted during the hearing establish the following disqualifying conditions apply as detailed in AG ¶ 13:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (b) pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop;
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and
- (d) sexual behavior of a public nature or that reflects lack of discretion or judgment.

The following mitigating conditions are potentially applicable as detailed in AG ¶ 14:

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

AG ¶¶ 14(b) and 14(c) are not applicable. Applicant's "longstanding consumption of pornography, viewing pornography that depicted criminal acts, and engaging in" sexual acts in public places (while attempting to maintain discretion)", which was described as "atypical compensatory behavior" by the evaluating psychologist, casts doubt on his current reliability, trustworthiness, and judgment. He engaged in this behavior while holding a security clearance. The psychologist did not provide a favorable prognosis recommendation regarding Applicant's sexual behavior. While the support Applicant has from his wife is commendable, it does not mitigate his history of risky sexual behavior which leaves him vulnerable to coercion, exploitation, or duress. Insufficient time has passed to find the sexual behavior happened so long ago that it is unlikely to recur.

Guideline I, Psychological Conditions

AG ¶ 27 articulates the security concern for psychological conditions:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

I have considered the disqualifying conditions for psychological conditions under AG ¶ 28 and the following are potentially applicable in this case:

- (a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness.

The record establishes the concern that Applicant's behavior and diagnosed conditions could impair his judgment, stability, reliability, and trustworthiness. He continues to work on sexual addiction issues. AG ¶¶ 28(a), and (b) apply.

I have considered the mitigating conditions under AG ¶ 29:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

(e) there is no indication of a current problem.

AG ¶¶ 29(a), (b), (c), (d), and (e) do not apply. Applicant did not provide sufficient evidence to show that his condition is under control or in remission, or that he is now stable. He does not have a recent opinion by a duly qualified mental health professional. While Applicant testified he stopped his behavior over four years ago, the prognosis by U.S. Government psychologist was that Applicant's condition was not under control or in remission because there were no sustained periods of abstinence.

Applicant's wife's role in helping Applicant is admirable. The record shows that Applicant with the help of his wife is working to establish stability and find the best methods to manage his sex drive. Considering the evidence as a whole, I find that none of the above mitigating conditions are established. There is sufficient evidence to find that a mental-health concern still exists. Applicant failed to mitigate the psychological conditions security concerns.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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.

I have incorporated my comments under Guidelines D and I in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d).

After weighing the disqualifying and mitigating conditions under Guidelines D and I and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his conduct.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1: Guideline D: Subparagraphs 1.a-1.d:	AGAINST APPLICANT Against Applicant
Paragraph 2: Guideline I: Subparagraph 2.a:	AGAINST APPLICANT Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale
Administrative Judge