

DISCR OSD Case No. 99-0016, 1999 WL 715788 (D.I.S.C.R.)

Department of Defense
Directorate for Industrial Security Clearance Review (DISCR)

In Re: **** Applicant for Security Clearance

DISCR Case No.
99
-
0016

May 21, 1999

FOR GOVERNMENT

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FOR APPLICANT

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DECISION OF ADMINISTRATIVE JUDGE**JEROME H. SILBER****STATEMENT OF THE CASE**

On January 20, 1999, the Defense Office of Hearings and Appeals (DOHA) pursuant to [Executive Order 10865](#), as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked. In a written statement, dated January 8, 1999, and notarized on February 9, 1999, the Applicant responded to the allegations set forth in the SOR and requested a hearing.

The undersigned Administrative Judge received the case assignment on February 23, 1999. A notice of hearing, dated March 3, 1999, scheduled the hearing for March 22, 1999. The Applicant's request for a continuance of the hearing in the case was granted on March 19, 1999, thereby postponing the hearing 14 days from the originally-scheduled hearing. The undersigned held the hearing on April 5, 1999. The Department Counsel presented three exhibits ("exhs") and the testimony of one witness. The Applicant's case consisted of the presentation of twelve exhibits and the testimony of his wife and a psychiatrist as well as his own testimony. In addition, official notice was taken of the Applicant's exhibit #2 without objection. The Government's exhibit #4 and the Applicant's exhibit #9 were not offered into evidence. The record closed on April 5, 1999. The undersigned Administrative Judge received the transcript ("tr") of the hearing on May 18, 1999.

FINDINGS OF FACT

The Statement of Reasons (SOR) consisted of allegations predicated on the following three criteria: paragraph 1, Criterion D (sexual behavior); paragraph 2, Criterion E (personal conduct); and paragraph 3, Criterion J (criminal conduct).

SOR ¶1 alleges that in 1978-92 the Applicant engaged in public masturbation “at times openly, in anticipation of being seen, on approximately 10 to 20 times” as well as in other acts of sexual misconduct. SOR ¶2 alleges that the Applicant falsified his April 1998 signed statement given to a Defense Security Service (DSS) agent in that he stated in it that he “had engaged in public masturbation but never with the intention of having anyone see” him. SOR ¶3 alleges that such falsification constitutes a Federal felony under [18 U.S.C. § 1001](#).

The undersigned Administrative Judge completely and thoroughly reviewed the evidence in the record, and upon due consideration of the same, makes the following Findings of Fact:

The Applicant is a 39-year-old instructor employed by a U.S. Government contractor. The Applicant seeks to retain a Top Secret personnel security clearance. The Applicant enlisted in the U.S. Army in 1978 when he was 18 years old. He took voluntary early retirement in April 1995 as a sergeant first class (E-7). He married in March 1980 and has daughters ages 18 and 15. For the last three years of his military career he served with TS/SCI clearances as an intelligence NCO assigned to a joint activity. He compiled an outstanding military record that was recognized in Defense Department awards, medals, and evaluation reports. He served as a contractor employee at the post from which he retired and has continued to receive excellent performance appraisals during the past four years. He attended civilian colleges since 1988 while on active duty and graduated with a bachelor's degree in September 1994.

The Applicant engaged in “masturbatory behavior of a compulsive, repetitive nature, often outside the privacy of his home” during 1978-91. [\[FN1\]](#) This is the conclusion of a board-certified psychiatrist after having examined the complete SOR as well as the Government's exhibits provided by discovery to the Applicant's attorneys and a previous clearance decision issued in September 1997, and after having interviewed the Applicant 12 days before the hearing. The psychiatrist's expertise was recognized by both parties at the hearing, and his written psychiatric opinion was admitted without objection. [\[FN2\]](#) The Applicant now has “no current applicable psychiatric disorder.” [\[FN3\]](#)

The Applicant masturbated in public—or semi-public places, *e.g.*, his automobile while parked in a public parking space—approximately weekly over approximately a ten-year period. He was never arrested and is unsure whether he was ever seen while thus engaged. He did not deliberately and purposefully set out to be seen by, or to shock, strangers as an exhibitionist (a “flasher”) would, but fantasied that he might be seen and assumed the risk accordingly. [\[FN4\]](#) In the late 1970's he solicited for prostitution on four occasions, including twice when he suspected the prostitutes were transvestites. (SOR ¶ 1.b) In 1978 or 1979 he masturbated twice while watching unsuspecting teenage girls undress in a gymnasium. (SOR ¶1.c) Sometime between 1983 and 1986 he masturbated in his car while noticing children at an elementary school playground. (SOR ¶1.e) In the early 1980's he peeped through a door keyhole and masturbated while watching his unsuspecting wife and her teenage sister as they were undressing. (SOR ¶1.d) He also masturbated, for example, in private men's room stalls while at work, while in private booths at peep shows, and while in his parked car at various shopping malls.

During the spring of 1990 the Applicant returned to the church from which he had disassociated himself over the past ten years or so, and went to confession. Tr pages 160-161, 230, 242-243. The occasion was the first communion of his daughter. Starting anew from that point, the Applicant curtailed his prior sexual misconduct and—at least by 1992 if not 1991 [\[FN5\]](#)—had made a solemn commitment to God to never masturbate in public again. He has kept that commitment without once lapsing since then. Tr pages 166, 184-185, 219-220, 229. The Applicant has achieved this self-control without psychological treatment or other professional counseling except clerical counseling and advice.

In the late autumn of 1989 the Applicant's wife had a partial hysterectomy at age 29. This operation has resulted in a great

improvement in the sexual relations between the Applicant and his wife. Tr pages 153-154, 228. She had been very ill during her first pregnancy in 1980 and had continued to experience pain (a burning sensation)—off and on—during sexual intercourse with her husband since then until the date of her hysterectomy. He respected her antipathy toward intercourse and did not often approach her for sex. She recognized that her husband was a young man with normal sexual desires and preferred that he masturbate rather than have an affair to relieve himself. Tr pages 152-154, 227-228, 230-232.

One week when the Applicant's wife and children were away from home on vacation during the summer of 1996, the Applicant used his computer in the privacy of his own home to enter into interactive “chat rooms” on the Internet to discuss sex (usually masturbation) with others he assumed were adult women. (SOR ¶1.f) He masturbated three or four times that week while in those “chat rooms.” Tr pages 185-186, 191-192, 218. He never solicited sex, downloaded child pornography, or met the others in person. Gov.'s exh. #2, page 3.

In September 1997 the Applicant was denied continued eligibility for access to sensitive compartmented information (SCI) by the joint activity with which he had been associated since June 1992 on active duty and subsequently. He had disclosed his prior sexual misconduct in a series of polygraph examinations conducted by that activity in the spring of 1997. Tr pages 176-179, 186-191, 198-199. When he received that SCI revocation he discussed the details of that misconduct with his wife [\[FN6\]](#) and has since then kept her informed of the current case as it was being investigated, when the SOR was issued, and when he received Gov.'s exh. #2 through discovery. He did so despite the advice of his priest and his psychiatrist to keep the details from his family. Tr pages 167-168, 199-212, 221-222, 226, 233-242.

POLICIES

Enclosure 2 of the Directive ([32 C.F.R. part 154 appendix H](#)) sets forth adjudicative guidelines which must be considered in evaluating an individual's security eligibility. The guidelines are divided into those that may be considered in determining whether to deny or revoke a clearance (Disqualifying Conditions or DC) and those that may be considered in determining whether to grant or continue an individual's access to classified information (Mitigating Conditions or MC). In evaluating this case, relevant adjudicative guidelines as set forth below have been carefully considered as the most pertinent to the facts of this particular case.

The criteria, disqualifying conditions, and mitigating conditions most pertinent to an evaluation of the facts of this case are:

CRITERION D - SEXUAL BEHAVIOR

Sexual behavior is a security concern if it involves a criminal offense, indicates a personality or emotional disorder, subjects the individual to undue influence or coercion, or reflects lack of judgment or discretion. The adjudicator should also consider guidelines pertaining to criminal conduct (criterion J); or emotional, mental, and personality disorders (criterion I), in determining how to resolve the security concerns raised by sexual behavior. (Sexual orientation or preference may not be used as a basis for or a disqualifying factor in determining a person's eligibility for a security clearance)

Conditions that could raise a security concern and may be disqualifying include:

- (1) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (2) compulsive or addictive sexual behavior when the person is unable to stop a pattern of self-destructive or high-risk behavior or that which is symptomatic of a personality disorder;
- (3) sexual behavior that causes an individual to be vulnerable to undue influence or coercion;
- (4) sexual behavior of a public nature and/or that which reflects lack of discretion or judgment.

Conditions that could mitigate security concerns include:

- (2) the behavior was not recent and there is no evidence of subsequent conduct of a similar nature;
- (4) the behavior no longer serves as a basis for undue influence or coercion.

CRITERION I - EMOTIONAL, MENTAL, AND PERSONALITY DISORDERS

Emotional, mental, and personality disorders can cause a significant deficit in an individual's psychological, social and occupational functioning. These disorders are of security concern because they may indicate a defect in judgment, reliability or stability.

When appropriate, a credentialed mental health professional (credentialed mental health professional: licensed clinical psychologist, licensed social worker, or board certified psychiatrist), acceptable to or approved by the government, should be consulted so that potentially disqualifying and mitigating information may be fully and properly evaluated.

Conditions that could raise a security concern and may be disqualifying include:

- (1) a diagnosis by a credentialed mental health professional (credentialed mental health professional: licensed clinical psychologist, licensed social worker, or board certified psychiatrist) that the individual has a disorder that could result in a defect in psychological, social, or occupational functioning;
- (3) a pattern of high-risk, irresponsible, aggressive, antisocial or emotionally unstable behavior;

Conditions that could mitigate security concerns include:

- (1) there is no indication of a current problem;
- (2) recent diagnosis by a credentialed mental health professional (credentialed mental health professional: licensed clinical psychologist, licensed social worker, or board certified psychiatrist) that an individual's previous emotional, mental, or personality disorder is cured or in remission and has a low probability of recurrence or exacerbation;

CRITERION E - PERSONAL CONDUCT

Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying also include:

- (2) the deliberate omission, concealment, or falsification of relevant and material 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;

Conditions that could mitigate security concerns include:

- (5) the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or pressure;

CRITERION J - CRIMINAL CONDUCT

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

- (1) any criminal conduct, regardless of whether the person was formally charged;
- (2) a single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

- (1) the criminal behavior was not recent;
- (5) there is clear evidence of successful rehabilitation.

The Directive also requires the undersigned to consider, as appropriate, the factors enumerated in Section F.3:

- a. Nature and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved.
- e. Absence or presence of rehabilitation.
- f. Probability that the circumstances or conduct will continue or recur in the future.

Enclosure 2 to the Directive provides that the adjudicator should consider the following factors:

- The nature, extent, and seriousness of the conduct
- The circumstances surrounding the conduct, to include knowledgeable participation
- The frequency and recency of the conduct
- The individual's age and maturity at the time of the conduct
- The voluntariness of participation
- The presence or absence of rehabilitation and other pertinent behavioral changes
- The motivation for the conduct
- The potential for pressure, coercion, exploitation, or duress
- The likelihood of continuation or recurrence

Under the provisions of [Executive Order 10865](#), as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record. Determinations under the Directive include consideration of the risk that an applicant may deliberately or inadvertently fail to safeguard properly classified information as that term is defined and established under [Executive Order 12958](#), effective on October 14, 1995.

Initially, the Government has the burden of proving controverted facts alleged in the Statement of Reasons. The United States Supreme Court has said:

“It is difficult to see how the Board would be able to review security-clearance determinations under a preponderance of the evidence standard without departing from the ‘clearly consistent with the interests of the national security’ test. The clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials. Placing the burden on the Government to support the denial [of a security clearance] by a preponderance of the evidence would inevitably shift the emphasis and involve the Board in second-guessing the agency's national security determinations.”

[Dept. of the Navy v. Egan, 484 U.S. 518, 531 \(1988\)](#). This Administrative Judge understands that Supreme Court guidance in its context to go to the minimum *quantum* of the admissible evidence that must be adduced by the Government in these proceedings to make its case, that is, substantial evidence but something less than a preponderance of the evidence—rather than as an indication of the Court's tolerance for error below. [\[FN7\]](#)

The burden of going forward with the evidence then shifts to the applicant for the purpose of establishing his or her security eligibility through evidence of refutation, extenuation or mitigation of the Government's case or through evidence of affirmative defenses. Assuming the Government's case is not refuted, and further assuming it can reasonably be inferred from the facts proven that an applicant might deliberately or inadvertently fail to safeguard properly classified information, the applicant has a heavy burden of persuasion to demonstrate he or she is nonetheless eligible to hold a security clearance. [\[FN8\]](#)

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility and demeanor of those who testified, the undersigned concludes that the Applicant successfully rebutted and overcame the Government's case with regard to Criterion D.

At the outset, it should be noted that the adverse September 1997 clearance decision received by the Applicant does not operate as a forfeiture of the Applicant's right to a hearing under [Executive Order 10865](#) and Department of Defense Directive 5220.6 (January 2, 1992) or preclude a favorable decision in this case pursuant to the doctrines of collateral estoppel, equitable estoppel, or *res judicata*. [\[FN9\]](#) Relevant evidence concerning the Applicant's behavior in the last 18 months must be weighed together with other evidence in the record including the September 1997 clearance decision itself—especially to the extent its rationale is in evidence—in accordance with the “whole person” concept. [\[FN10\]](#)

The Applicant engaged in a pattern of high-risk sexual misconduct over an extended time period in the distant past. Because it occurred in public, some of the misconduct was criminal in nature, *e.g.*, indecent exposure, solicitation of prostitution, various voyeuristic activities, and similar misdemeanors. The misconduct was driven compulsively. It rendered him vulnerable to undue influence or coercion. [FN11] This pattern of misconduct falls within the scope of each of the disqualifying conditions (DCs) under Criterion D, which are identified on page 5 *supra*. It also falls within the scope of DC #1 and DC #3 under Criterion I, which are identified on page 6 *supra*. Although some of the misconduct occurred in foreign countries [FN12] in which it was apparently not criminal or in private circumstances not a crime under United States law, [FN13] there were multiple instances in which relatively minor crimes were committed. As such, the latter instances fall within the scope of DC #1 and DC #2 under Criterion J, which are identified on page 7 *supra*.

In mitigation, the Applicant's sexual misconduct ceased seven or eight years ago through self-control prompted by a genuine religious reawakening. Disclosure by the Applicant to his wife and a number of security officials over the last two years has minimized the potential for undue influence, exploitation, or coercion at the present time. This evidence falls within the scope of mitigating conditions (MCs) #2 and MC #4 under Criterion D, which are identified on page 5 *supra*, and MC #1 and MC #5 under Criterion J, which are identified on page 8 *supra*. A credentialed mental health professional has recently diagnosed the Applicant with “no current applicable psychiatric disorder” and concluded that his former compulsive activity is “in remission.” [FN14] This falls within the scope of MC #1 and MC #2 under Criterion I, which are identified on page 6 *supra*.

With particular regard to MC #2 under Criterion D, the Applicant's masturbatory activity in the privacy of his own home while participating in “chat rooms” on the Internet 2-3 years ago was dissimilar in nature to the misconduct prior to 1991 or 1992. In the first place, it occurred in private; [FN15] secondly, it was not criminal; [FN16] and, thirdly, it was not a manifestation of a psychiatric disorder. *See* tr pages 107-111, 141. The expert opinion in Applicant's exh. #1 was rendered upon consideration by the psychiatrist of the information about these incidents in SOR ¶1.f and Gov.'s exh. #2. Tr pages 136-138.

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility and demeanor of those who testified, the undersigned concludes that the Applicant successfully refuted the Government's case with regard to Criteria E and J.

SOR ¶2 and SOR ¶3 allege that the Applicant knowingly falsified a sworn statement he signed for a Defense Security Service (DSS) agent in April 1998 and that such falsification constitutes felonious conduct punishable by 18 U.S.C. § 1001. [FN17] The allegedly false statement reads:

From approximately the late 1970's to the spring of 1990 I engaged in public masturbation in my car, but never with the intention of having anyone see me.

Gov. exh. #3, page 1. Subsequently, the Applicant was reported to have told another DSS agent—according to the DSS agent:

Subject initially denied that he ever exposed his penis in public with the intent of having someone see him, but later Subject admitted that he did this on a few occasions hoping that someone would see him. Subject admitted at the conclusion of the interview that this had occurred ten to 20 times if he counted his public masturbation while looking at women enclosed by a glass window at peep shows.

Gov. exh. #2, page 1; tr pages 163-166, 179, 206. This proves little more than neither the Applicant nor the second agent seemed to have been aware during the latter's interview that the April 1998 statement was limited, however ambiguously, to public masturbatory behavior “**in his car.**” [FN18] They apparently each assumed that the April 1998 statement implied that no public masturbation anywhere during the entire period of time was ever intended to be seen by someone else. A “confession” of falsification does not *ipso facto* establish falsification, of course, where what is alleged to have been falsified is, in fact, a true statement.

The April 1998 statement was not false, and certainly not *deliberately* false as the SOR alleges. The Applicant never set out to be seen by, or to shock, strangers (*i.e.*, exhibitionism [FN19]), although he imagined or fantasied at the time that he might be seen. A reasonable person acting in the Applicant's place during the April 1998 DSS interview most likely would understand that the agent was asking whether he had ever tried to engage in sexually exhibitory behavior since the late 1970's by

masturbating in public. The Applicant truthfully denied that he had. This accords with a common sense understanding of the matter. He did not in fact deliberately omit, conceal, or falsify relevant and material facts, as the SOR alleges, from the April 1998 "personal history statement, or similar form used to conduct investigations" within the scope of DC #2 under Criterion E, identified on page 6 *supra*. In absence of deliberate falsification, omission, or concealment, no violation of [18 U.S.C. § 1001](#) occurred.

Each clearance decision is required to take into consideration pertinent factors set forth in Section F.3 of the Directive and in the adjudicative process discussion at enclosure 2 to the Directive. These factors are identified on page 8 *supra*. The nature and seriousness of the Applicant's conduct in 1978 to 1991 or 1992, its frequency, and his age at which it occurred weigh against him. That it did not occur recently weighs in his favor. That the Applicant has demonstrated positive changes in behavior, has honestly cooperated with all investigations over the last two years, and has succeeded in rehabilitating himself over an extensive period all support the conclusion that the Applicant's prior compulsion is under control and the misconduct is not likely to recur.

FORMAL FINDINGS

Formal findings as required by Enclosure 1 of the Directive (see paragraph (7) of section 3 of [Executive Order 10865](#), as amended) and the additional procedural guidance contained in item 25 of Enclosure 3 of the Directive are:

(S1(Paragraph 1. Criterion D: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

(S1(Paragraph 2. Criterion E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

(S1(Paragraph 3. Criterion J: FOR APPLICANT

Subparagraph 3.a.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is the determination of the undersigned that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Jerome H. Silber
Administrative Judge

[FN1](#). See Applicant's exh. #1, page 2.

[FN2](#). Tr pages 89-96; Applicant's exh. #3. An Administrative Judge is not bound to give full or decisive weight to testimony merely because it comes from expert witnesses, even if unrebutted, and his responsibility to consider and weigh the record evidence as a whole is not diminished by the presence of expert opinions. ISCR Case No. 98-0265 (March 17, 1999) at 4. In this particular case the findings of fact pertaining to the Applicant's psychiatric history and present mental status, after weighing the evidence as a whole, are based largely upon the conclusions of the psychiatrist who testified.

[FN3](#). See Applicant's exh. #1, page 3. The psychiatrist states:

By his own reporting [the Applicant] has a history of engaging in compulsive masturbatory activity in the past, but this activity does not, in itself, constitute a diagnosable mental disorder, in my judgment. And, in any case, the compulsive activity has now been in remission for approximately eight years. In addition, I understand that his wife knows the details of his sexual activities, so he would not be subject to coercion or blackmail.

[The Applicant's] compulsive activities appear to be under his control and are not likely to recur for the following reasons:

1. renewed religious values and morals, done of his own free will, in 1990.
2. 8-9 years of abstinence
3. decreased hormonal (testosterone) blood levels due to the natural effects of aging
4. the current legal and career consequences of any resumption.

[FN4](#). In one incident in 1978 or 1979, he evaded detection by his supervisor by rolling under his car and feigning its repair. (SOR ¶1.c) This tends to negate an intent to be seen while publicly masturbating. Tr pages 134, 155, 161-162, 180-184, 195-198, 212-213. *But see* the summary of the 1997 adverse clearance decision in Applicant's exh. #1, page 1.

[FN5](#). The record evidence is conflicting as to the date when he last engaged in public masturbation.

[FN6](#). The Applicant has generally been a close-mouthed person. Due to the classified nature of his intelligence duties, the Applicant had, of course, previously not discussed any matters closely related to his various assignments with his family. He sought permission from the polygrapher in 1997 to tell his wife what was going on. Tr pages 234-235.

[FN7](#). The rule has been restated as requiring "that security clearances should be revoked [*sic*] if doing so is consistent with the national interest;" *Doe v. Schachter*, 804 F. Supp. 53, 62 (N.D.Cal. 1992). *Cf.* with regard to the *quantum* of evidence the DISCR Appeal Board analysis in DISCR OSD Case No. 90-1054 (July 20, 1992) at pages 3-5, and DOHA Case No. 94-0966 (July 21, 1995) at pages 3-4. The Directive establishes the following standard of review:

[Whether the] Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record. In making this review, the [DISCR] Appeal Board shall give deference to the credibility determinations of the Administrative Judge.

Item 32.a. of the Additional Procedural Guidance (Enclosure 3 to the Directive). See also [5 U.S.C. §556\(d\)](#).

[FN8](#). While the Government has the burden of proving controverted facts, the Applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Items 14 and 15 of the Additional Procedural Guidance (Enclosure 3 to the Directive).

[FN9](#). ISCR Case No. 98-0320 (April 8, 1999) at 4 ("In addition, because Section 2-203 of the NISPOM directs that reciproc-

ity be given to favorable security clearance decisions but not to unfavorable ones, application of Section 2-203 in DOHA proceedings in appropriate cases would not be in derogation of an applicant's right to a hearing under [Executive Order 10865](#) and the Directive”).

[FN10](#). The “whole person” concept is prescribed by Appendix I, DoD Regulation 5200.2-R, subject: “Personnel Security Program Regulation,” January 1987, and governs DOHA clearance decisions in accordance with Section F.3 of the Directive. *See* enclosure 2 to the Directive.

[FN11](#). Vulnerability to undue influence or coercion is not limited to situations of possible blackmail. It includes situations where a person is vulnerable to influence, however subtle or noncoercive, that could be exploited to induce a person to act in a manner that is inconsistent with the national security interest of the United States. ISCR Case No. 98-0265 (March 17, 1999) at 3.

[FN12](#). For example, masturbation while in private booths at peep shows.

[FN13](#). For example, masturbation while watching through a door keyhole as his wife and her sister were undressing.

[FN14](#). *See* footnote 3 on page 3 *supra*.

[FN15](#). Onanism is widely considered immoral—and sinful by several religions— which accounts in large part for its potential for coercion. Absent criminality, aberrant psychological issues, and any potential for undue influence or coercion, the security significance of a week of private masturbatory activity some years ago is minimal. *See also* tr pages 129-130.

[FN16](#). There is, for example, no evidence that the “chat rooms” in which the Applicant participated involved him in the “knowing” receipt of child pornography (a felony under [18 U.S.C. § 2252](#)). *See, e.g.*, ISCR Case No. 98-0752 (Decision of May 7, 1999) at 7. Tr page 162. During the week in question the Applicant never solicited sex, downloaded “kiddie porn,” or arranged to meet the other participants in the “chat rooms” in person.

[FN17](#). The cited provision provides: “Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.” (emphasis added.) Such an offense is classified as a Class D felony in accordance with [18 U.S.C. § 3559\(a\)](#); with regard to the maximum fine authorized, *see* [18 U.S.C. § 3571](#).

[FN18](#). Indeed, the second DSS agent reported, “Subject acknowledged that he knew he was not completely truthful in his statement to DSS dated [] April 98 when he said he never masturbated in public with the intent to have anyone see him.” Gov.'s exh. #2, page 4. *See* tr pages 66-86, 168-169, 194-195.

[FN19](#). DSM-IV, pages 525-526 (Applicant's exh. #12).

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