

KEYWORD: Guideline J; Guideline E; Guideline G

DIGEST: Government Exhibit 7 contains 40 police department call-log sheets. Applicant challenges 12 of the calls, noting that some involved the conduct of his ex-wife instead of his conduct and some do not involve any questionable conduct, e.g., an unintended 911 cell call or a duplicate call-log sheet. First, we interpret the Judge’s finding as not being limited to calls to the police department about Applicant’s questionable conduct but rather to encompass all domestic disturbance calls originating from his residence. Second, given the number of call log sheets in GE 7, the Judge apparently disregarded three of them in making his finding. Third, Applicant admitted in responding to the SOR that the police were called to his home at least 25 times for domestic disturbances since 2010. Fourth, any mistakes the Judge may have made regarding the number or nature of the challenged calls amount to harmless error because they would not likely affect the outcome of the case. Adverse decision is affirmed.

CASE NO: 18-02581.a1

DATE: 01/14/2020

DATE: January 14, 2020

In Re:	)	
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	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 9, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct), Guideline E (Personal Conduct), and Guideline G (Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 10, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in his findings of fact and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge found in favor of Applicant on two of four Guideline E allegations and on all of the Guideline J and Guideline G allegations. The Judge found against Applicant on a Guideline E allegation that cross-alleged all of the Guideline J allegations and on an allegation involving a 2018 incident discussed below. The favorable findings have not been raised as issues on appeal. Consistent with the following, we affirm.

### **The Judge’s Pertinent Findings of Fact**

Applicant, who is in his early 40s, retired from the military after 20 years of honorable service and has worked for a defense contractor for the last four years. He married in 2009, divorced in 2016, and has custody of his two children. About a year after their divorce, his ex-wife began residing with him again and continues to do so.

Applicant admitted he has a volatile relationship with his ex-wife that predated their marriage. Between 2001 and 2014, he had criminal charges related to domestic violence brought against him on seven separate occasions. Due to those charges, he pled guilty to harassment in 2001 and was sentenced to a deferred sentence; pled guilty to violating a restraining order later in 2001 and was sentenced to 24 months of probation and required to attend 36 domestic violence counseling sessions; and pled guilty to criminal mischief (breaking his then-wife’s cell phone) in 2013 and was sentenced to supervised probation and domestic violence counseling. The other charges against him were dismissed. Although criminal charges for a November 2013 incident were dismissed, the military took action to demote Applicant because of that incident.

Between 2010 and 2018, approximately 37 phone calls were made to the local police department from Applicant’s residence claiming domestic violence disturbances between Applicant, his ex-wife, and his children. Several of the domestic disturbance calls referenced Applicant’s use of alcohol, but he denied alcohol use led to any of the incidents. In 2018, Applicant locked his ex-wife out of the house. The police were called and informed him that she was considered a resident and he must allow her access to the property. Applicant admitted that he and his ex-wife were both at fault for letting disagreements foment into larger issues that resulted in police involvement. Although he admitted engaging in the arguments and breaking the cell phone, he denied ever hitting or striking his ex-wife.

## **The Judge's Pertinent Analysis**

Applicant has not been arrested since 2014, which shows some amount of rehabilitation. He successfully completed a domestic violence group treatment in 2014. However, Applicant's nearly 20-year relationship with his ex-wife routinely requires police involvement and includes multiple arrests for domestic disturbances. The incidents are not minor and cast doubt on his reliability, trustworthiness, and judgment. "[B]ecause he continues to have disputes with [his ex-wife], who he allows to reside in his home, which require police involvement, future problems and disturbances are likely to recur." [Decision at 7.] Applicant failed to mitigate the personal conduct security concerns.

## **Discussion**

Applicant contends the SOR allegations lack vital details and notes that there are often contradictions in the statements of suspects and witnesses taken during criminal investigations. However, an SOR is an administrative pleading that is not held to the strict requirements of a criminal indictment, and it does not have to allege every possible fact that might be relevant at the hearing. *See, e.g.*, ISCR Case No. 15-08255 at 3 (App. Bd. Aug. 22, 2017). The SOR allegations at issue were sufficient to place Applicant on notice of the Guideline E security concerns.

Applicant makes various arguments that the evidence is insufficient to prove the SOR allegations. He highlights purported deficiencies in the police reports and points to matters in them for support of his arguments that his ex-wife is not honest, that she misled investigators, and that her injuries were likely self-inflicted. In general, he argues the police reports lack credibility and contain false accusations. In this regard, we note that Applicant admitted the eight Guideline J allegations. These include allegations pertaining to seven incidents in which domestic violence charges were brought against him between 2001 and 2014 and an allegation asserting the police were called to his home for domestic disturbances at least 25 times since 2010. Although Applicant denied the Guideline E allegation that cross-alleged those eight Guideline J allegations, the Judge properly could have considered Applicant's admissions to all of the facts incorporated in the cross-alleged Guideline E allegation in determining whether it was proven. Applicant also admitted the Guideline E allegation that he locked his ex-wife out of the house in 2018 and that the police informed him that he must allow her access to the house as a resident. From our review of the record, we conclude the Judge's material findings and conclusions of a security concern in this case are based on substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.* ISCR Case No. 17-02225 at 2-3 (App. Bd. Jun. 25, 2019). Furthermore, we give deference to an Administrative Judge's credibility determination. Directive ¶ E3.1.32.1. To a significant extent Applicant is challenging the Judge's credibility determinations. Given the record evidence as a whole, Applicant's challenges are not persuasive.

Applicant asserts the Judge erred in finding that 37 domestic disturbance calls were made from Applicant's residence between 2010 and 2018. Government Exhibit 7 contains 40 police

department call-log sheets. Applicant challenges 12 of the calls, noting that some involved the conduct of his ex-wife instead of his conduct and some do not involve any questionable conduct, *e.g.*, an unintended 911 cell call or a duplicate call-log sheet. First, we interpret the Judge's finding as not being limited to calls to the police department about Applicant's questionable conduct but rather to encompass all domestic disturbance calls originating from his residence. Second, given the number of call log sheets in GE 7, the Judge apparently disregarded three of them in making his finding. Third, as noted above, Applicant admitted in responding to the SOR that the police were called to his home at least 25 times for domestic disturbances since 2010. Fourth, any mistakes the Judge may have made regarding the number or nature of the challenged calls amount to harmless error because they would not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 17-03727 at 4 (App. Bd. Aug. 23, 2019). Applicant's challenge to the Judge's findings regarding the police calls merit no relief.

Applicant argues there is no explanation how the allegations could lead to exploitation, manipulation, or duress. He also states, "It hasn't been articulated how these issues [such as, questionable judgment] apply. Articulation of credible negative conduct hasn't been articulated." Appeal Brief at 10. To the extent that he is arguing the conduct alleged fails to establish security concerns, we do not find that argument persuasive. The Directive presumes there is a nexus or rational connection between proven conduct under any of the Guidelines and an applicant's security eligibility. *See, e.g.*, ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018). Direct or objective evidence of nexus is not required. *Id.*

Applicant further argues that he has not been involved in intentional or accidental disclosures of classified information or that he failed to follow security measures. While the absence of prior security violations is a matter that a Judge should consider, along with all the other evidence in the record, a prior good security record does not preclude a Judge from concluding that an applicant's circumstances present security concerns that he or she failed to mitigate. The Government does not have to wait until an applicant has compromised or mishandled classified information before it can deny the applicant a clearance. Even those with clean security records can encounter circumstances in which their judgment and reliability might be compromised. *See, e.g.*, ISCR Case No. 16-01131 at 2-3 (App. Bd. Apr. 19, 2018).

The balance of the Applicant's arguments advocate for an alternative weighing of the evidence. He challenges, for example, the Judge's conclusion that the incidents at issue from 2001 to 2018 were not minor. He also set forth various arguments for why his decision to let his ex-wife to continue to reside with him was mitigating. An applicant's disagreement with the Judge's weighing of the evidence or ability to argue for a different interpretation of the evidence is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

Applicant has failed to establish that the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of the Navy v.*

*Egan*, 484 U.S. 518, 528 (1988).

**Order**

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy  
Administrative Judge  
Member, Appeal Board