

KEYWORD: Guideline M; Guideline E

DIGEST: About six years ago, Applicant was terminated from a job for misuse of his company’s computer system by accessing sexually explicit material and for labor mischarging. Applicant was first counseled by his supervisor about appropriate use of company assets and labor charging after a coworker observed him viewing nude images.

About three years ago, Applicant was terminated from a job during a probationary period for unacceptable work performance and conduct. This included a lack of teamwork and argumentative and discourteous behavior, which negatively impacted the mission.

In his 2016 Declaration of Federal Employment, security clearance application (SCA) and background interview, Applicant omitted that he had viewed sexually explicit material and mischarged labor when reporting the first employment termination noted above. In a subsequent SCA and background interview, he disclosed more details, but still understated the reasons for his second employment termination. Adverse Decision Affirmed.

CASE NO: 20-01815.a1

DATE: 09/13/2021

DATE: September 13, 2021

In Re:)	
)	
-----)	ISCR Case No. 20-01815
)	
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 October 23, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline M (Use of Information Technology), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On June 24, 2021, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gina L. Marine denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact and Analysis

Applicant is in his thirties, is married with children, and holds a bachelor’s degree. He was previously granted security clearances. About six years ago, he was terminated from a job for misuse of his company’s computer system by accessing sexually explicit material and for labor mischarging. Applicant was first counseled by his supervisor about appropriate use of company assets and labor charging after a coworker observed him viewing nude images. About two months later, an investigation revealed that Applicant accessed sexually explicit images on seven days during a nine-day period and engaged in an excessive amount of non-work web activity. The employer concluded Applicant mischarged roughly 42% of his time, which amounted to over \$13,000. Later, a military service proposed debarment of Applicant for the mischarging, but that action was resolved in Applicant’s favor. It was determined he no longer posed a threat to the integrity of the government procurement process.

Applicant attributed his misconduct to a pornography addiction. He has since sought and received counseling to overcome his addiction and to prevent relapses. About four years ago, a counselor opined Applicant would make a full recovery.

About three years ago, Applicant was terminated from a job during a probationary period for unacceptable work performance and conduct. This included a lack of teamwork and argumentative and discourteous behavior, which negatively impacted the mission. He attributed this termination to an inability to communicate effectively and denied any malicious intent. He has since received counsel from his wife and friends to better understand effective ways of interacting with coworkers.

In his 2016 Declaration of Federal Employment, security clearance application (SCA) and background interview, Applicant omitted that he had viewed sexually explicit material and mischarged labor when reporting the first employment termination noted above. In a subsequent SCA and background interview, he disclosed more details, but still understated the reasons for his second employment termination. In a December 2019 background interview, he “acknowledged that he had not gone into ‘extensive detail’ about the actual reasons for the [first] termination ‘due to the embarrassing nature of the situation.’” Decision at 4. In responding to the File of Relevant Material,

he expressed remorse for miscommunicating details regarding his employment terminations.

Applicant's misconduct was serious and denotes a pattern of questionable judgment and inappropriate behavior. "[H]is repeated and recent efforts to minimize and obscure the derogatory details of the facts and circumstances underlying [his employment terminations] during the security clearance process diminished the weight of the evidence of reform." Decision at 8. He has failed to mitigate the alleged security concerns.

Discussion

Applicant contends the Judge's "decision is against the great weight of the evidence." Appeal Brief at 1. He argues, for example, that the first termination happened a long time ago, that he has received counseling, that the debarment action concluded he was not a threat to the integrity of the procurement process, that he has worked hard to reform himself, and that he has earned the confidence of his current fellow workers and security professionals. He also explained his non-disclosure of the details about his first employment termination as an "abhorrence to the person I used to be and a desire to move on by stating the facts generally and moving on" and to not committing the details to memory. Appeal Brief at 1. His arguments amount to a disagreement with the Judge's weighing of the evidence. None of his arguments are enough to rebut the presumption that the Judge considered all of the evidence in the record or sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

Applicant's appeal brief also contains character reference letters that post-date the Judge's decision. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

Applicant has failed to establish 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). *See also* Directive, Encl. 2, App A. ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan
Michael Y. 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