

Date: November 1, 2022

In the matter of:)	
)	
)	
-----)	ISCR Case No. 20-01554
)	
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 December 30, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline D (Sexual Behavior), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 22, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. The Judge’s favorable findings under Guideline E are not at issue in this appeal.

Applicant has been employed by a DoD contractor since early 2019. He served in the U.S. military from 2000 until 2018, receiving a General Discharge under Honorable Conditions. While on active duty he deployed in support of U.S. objectives in the Middle East.

In 2016, Applicant was depressed after returning from an overseas assignment and was experiencing marital difficulties. He surfed the internet looking for dating opportunities. Applicant began exchanging emails with a person (Ms. C) who eventually advised that she was 14 years old. Though believing Ms. C to be underage and aware that sexual communications with a minor is illegal, he sent her photos of his genitals, offered to teach her how to perform various sexual acts, and provided information to her about access to websites containing pornographic videos. However, he denied fantasizing about sexual relations with minors. Applicant asked Ms. C to meet with him where they could be alone, although he insisted that he did not intend to have sex with her.¹ Applicant's interactions with Ms. C were discovered, and he admitted his misconduct to an investigator. Applicant received non-judicial punishment under the Uniform Code of Military Justice and was subsequently discharged for cause from the military, as stated above. These matters constitute the operative facts underlying each of the Guidelines in the SOR.

Applicant has disclosed his misconduct to his spouse, in-laws, and employer. He has received counseling from a therapist experienced in treating pedophiles, who advised that Applicant does not meet the criteria for pedophilia, although she did not provide a formal diagnosis. He has also received counseling from depression, anxiety, and ADHD through the VA. Applicant has expressed contrition for his misconduct and has become more active in his church. He provided evidence from numerous character witnesses, who attested to his honesty, professionalism, trustworthiness, and reliability. His references support his effort to obtain a clearance.

Though noting that Applicant's misconduct is not recent, that he has received counseling, and that he has an excellent employment record, the Judge found that Applicant's claim that he did not intend to commit a "lewd act" upon Ms. C was not credible and that there is insufficient proof of rehabilitation. The Judge concluded that Applicant had not accepted full responsibility for his security-significant conduct.

Applicant contends that there is sufficient evidence to demonstrate rehabilitation. He argues that the record shows that there have been no repeat offenses; that he has admitted his misconduct to investigators, employers, and family; that he is careful to follow all protocols in the handling of classified information; and that he has presented evidence that he can be trusted. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record or 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. 18-02872 at 3 (App. Bd. Jan. 15, 2020). Applicant requests "an interim clearance" and would willingly submit to interviews, release of records, or other procedures that would enable him to retain access to classified information. Applicant's arguments and the record evidence do not support application of any of the possible waivers to policy set forth in Directive, Encl. 2, App. C. *See, e.g.,* ISCR Case No. 19-01084 at 2 (App. Bd. Aug. 26, 2020).

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

¹ "I wasn't going to do anything like that . . . I couldn't do that. That's sick, twisted, and I don't even know why I went as far as I did. But to actually go and meet somebody and do something like that, no, I can't do that." Decision at 4, quoting Tr. at 62-63.

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: James F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Jennifer I. Goldstein
Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board