

Date: January 6, 2023

In the matter of:)
)
)
)
-----)
)
Applicant for Security Clearance)
_____)

ISCR Case No. 21-02392

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Brittany D. Forrester, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 10, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline I (Psychological Conditions) and Guideline D (Sexual Behavior) of DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 19, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Wilford H. Ross 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 adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings and Analysis

Applicant, who is in his mid-forties, is married with two children. He served in the military, retiring in 2019 in the grade of O-4. Applicant holds a bachelor's degree as well as a master's and seeks to retain a security clearance in connection to his job.

Applicant has had a series of sexual relationships outside of marriage, beginning around 2016 and ending two years later. Although some of these were "one night stands," one lasted for several months. Decision at 3. Applicant also has a "long-term addiction to pornography, which he is unable, or unwilling, to stop." *Id.* He has been receiving treatment for this condition since about 2017 and participates in a 12-step program.

In 2021, a DoD psychiatric consultant, Dr. S, interviewed Applicant. He also interviewed Applicant's supervisors, a security official, and a psychologist who at the time had been treating Applicant for several months. Dr. S diagnosed Applicant with a personality disorder, which "will inherently place [him] at a varying amount of risk in terms of judgment, reliability, and trustworthiness." *Id.* at 10. He stated that Applicant's "emotional reactivity and perception of rejection" could result in impulsive behaviors, noting that in the past Applicant had sought answers to his problems after he had acted in ways that contravened his values and caused harm to his family. *Id.*

Applicant has been seeing another provider, Dr. J, who stated by letter that Applicant "is taking his medications and comes to his follow-up appointments regularly." AE Q. In another letter, this provider stated that Applicant is motivated to seek help, complies with treatment, and is improving.

The Judge made extensive findings of fact, quoting liberally from various evidentiary documents, such as Applicant's medical records. He summarized his material findings at the beginning of the Analysis portion of the Decision, citing to Applicant's evidence that he has been addicted to pornography for many years, that he engaged in extra-marital sexual activity, and that he engaged in inappropriate conduct at work, as a consequence of which two female workers blocked him on social media. Although he testified that he has not had an affair since 2018, Applicant advised that he continues to suffer from "obsessive sexually-related thoughts and occasional obsessive conduct." *Id.* at 14. Applicant began treatment for his problems while still on active duty, and he did not disclose his extra-marital affairs to providers for several months. "Applicant has not always been an accurate reporter of his conduct . . . [F]or a considerable period of time he misstated or understated the extent of his conduct to his providers. His credibility, as well as his judgment, are suspect." *Id.*

In evaluating Applicant's case for mitigation, the Judge noted that Dr. J's statements do not qualify as a favorable prognosis. He concluded that there is no mental health finding that Applicant's problems are in remission or that there is a low probability of recurrence. He described Applicant's conduct as impulsive, high risk, and, insofar as acts of adultery occurred while he was on active duty, illegal under the Uniform Code of Military Justice. Moreover, "Applicant testified that he continued to deal with [his problems] within a few months of the hearing." *Id.* at 16. The Judge concluded that Applicant had not met his burden of persuasion as to mitigation.

Discussion

Applicant contends that the Judge did not consider, or that he mis-weighed, significant record evidence, such as the length of time that has elapsed since his last act of extramarital sex, his compliance with treatment, and the opinion of Dr. J. Applicant also contends that the Judge did not demonstrate that his difficulties bore a meaningful relation to the question of his willingness to protect classified information. In this regard, we note the opinion of Dr. S that Applicant suffers from a personality disorder that can manifest itself in impulsivity and poor decision-making, which bears upon his judgment, reliability, and trustworthiness. That prognosis is not substantially refuted by Dr. J. Moreover, the Judge did not err in characterizing Applicant's extra-marital affairs and other sexual behavior as compulsive and of a nature to subject him to vulnerability to pressure or coercion. We find no reason to disturb the Judge's conclusion that the evidence raises security concerns under both Guidelines. *See, e.g.*, ISCR Case No. 15-02903 at 2 (App. Bd. Mar. 9, 2017) for the proposition that there is a nexus between admitted or proved conduct and an applicant's eligibility for a clearance. Considering the record as a whole, we conclude that Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record or established 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).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Applicant has cited to no harmful error in the Judge's findings or analysis. 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: James F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

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

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board