

Date: March 27, 2023

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Applicant for Security Clearance )  
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ISCR Case No. 22-00440

**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 September 16, 2022, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct), Guideline J (Criminal Conduct), and Guideline G (Alcohol Consumption) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On February 15, 2023, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Benjamin R. Dorsey denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. For reasons stated below, we affirm the decision.

The Judge found in favor of Applicant on the Guideline G allegations. In responding to the SOR, Applicant admitted the Guideline E and J allegations with explanations. However, his response to a domestic abuse allegation amounts to a denial because he claimed he did not commit any abuse. The Judge found against Applicant on the Guideline E and J allegations, concluding that none of the potentially applicable mitigating conditions applied and that the record evidence raised doubts about his security clearance eligibility

In his appeal brief, Applicant presents new evidence, which the Appeal Board is prohibited from considering. Directive ¶ E3.1.29. Applicant also presents arguments challenging aspects of the Guideline E and J allegations that are addressed below.

### Fraudulently Obtaining a Professional Certification and Employment Resignation

Regarding these allegations, the Judge stated:

Applicant paid another individual to take a certification exam for him that was either required by his employer or would benefit his standing with his employer. He gained the certification under false pretenses. He then resigned from his employment [in April 2021] based upon this untrustworthy behavior. [Decision at 5.]

In his brief, Applicant contends the Judge found “that I did not self-report” this conduct. The SOR alleged that Applicant “self-reported” this fraudulent behavior. Furthermore, the Judge found that, “Applicant reported this conduct to his employer, apologized for his behavior, . . . [but it] is unclear from the record whether he reported this conduct prior to being confronted with it.” Decision at 2. To the extent that Applicant is challenging the Judge’s finding regarding the timing or sequencing of the self-reporting, he has failed to identify any evidence in the record to show the Judge erred in that finding. Directive ¶ E3.1.30 requires that an appeal brief state the specific issues being raised and cite specific portions of the record supporting any alleged error. Additionally, there is no presumption of error below, and the appealing party has the burden of demonstrating that the Judge committed factual or legal error. *See, e.g.*, ISCR Case No. 00-0339 at 3 (App. Bd. Mar. 22, 2001). In this case, Applicant has failed to meet that burden regarding the Guideline E allegations.

### Domestic Abuse Incident

Regarding this allegation, the Judge found:

In about September 2017, Applicant physically assaulted his ex-spouse after getting into an argument with her. Applicant’s ex-spouse alleged that he body-slammed her, causing her to strike her arm heavily on a dresser and the floor. Applicant claimed that he did not touch his ex-spouse, and that she struck him. [Decision at 2.]

On appeal, Applicant again contends that he never assaulted his ex-spouse and argues that she assaulted him. In doing so, he highlights that he was never charged with any offense due to this incident and states that his ex-spouse was having an intimate relationship with the military police officer who arrested him. In the findings of fact, the Judge noted that, when the military police arrived at the scene, they noticed bruising on the ex-spouse’s arm and scratches on Applicant’s arm, that he told the police that he and his ex-spouse did not have domestic abuse issues in the past but contradicted that statement during his counseling with a social worker, and that a military “Family Advocacy Program Case Review Committee determined that Applicant’s

ex-spouse qualified as a victim of physical abuse based on this incident” and that she was authorized compensation as a family member who was physically abused by a military member. Decision at 3. The Judge concluded that the evidence corroborated the spouse’s version of the events and that Applicant was not truthful about the incident, which undercut his mitigating evidence. Decision at 7. Directive ¶ E3.1.32.1 requires the Appeal Board to give deference to a Judge’s credibility determinations. We find no basis for not giving such deference in this case. From our review of the record, the Judge’s material findings and conclusions of a security concern regarding the domestic abuse allegation 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).

### Driving While Intoxicated

In 2017, Applicant drove a vehicle while intoxicated by alcohol. He was stopped on post by military police and breathalyzer tests registered blood alcohol content levels of .116, .102, and .092. At a nonjudicial punishment proceeding, he was reduced in rank and was awarded 45 days of extra duty and restriction. In 2018, he was administratively separated from the military with a general discharge under honorable conditions. Decision at 2.

Applicant’s brief highlights that these events occurred five years ago, that he has attended counseling, including mental-health counseling, and that he now drinks responsibly. A security clearance decision must be based upon consideration of all the relevant and material information. Directive ¶ 6.3. Applicant’s arguments fail to establish that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3.

### Conclusion

Applicant’s brief states that revoking his security clearance will negatively impact not only him but also his family. The Directive, however, does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 17-03024 at 3 (App. Bd. Jan. 9, 2020).

Applicant failed to establish that the Judge committed any harmful error or that he merits any relief. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. “The general standard is that a clearance may be granted only when ‘clearly consistent with 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 national security.”

**Order**

The decision is **AFFIRMED**.

Signed: James F. Duffy

James F. Duffy  
Administrative Judge  
Chairperson, Appeal Board

Signed: Moira Modzelewski

Moira Modzelewski  
Administrative Judge  
Member, Appeal Board

Signed: Allison Marie

Allison Marie  
Administrative Judge  
Member, Appeal Board