

Date: July 31, 2023

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

ISCR Case No. 22-01128

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 2, 2022, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision – security concerns raised under Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On May 31, 2023, Defense Office of Hearings and Appeals Administrative Judge Benjamin R. Dorsey denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant is in his early 20s. He earned a commercial diving certificate in March 2021 and has worked for a defense contractor since April 2021. Under Guideline J, the SOR alleged that Applicant was arrested three times in December 2021 and charged with offenses including Stalking, Obstruction of Justice, Violation of Protective Order, and Assault and Battery. Applicant was found guilty of the two Protective Order violation charges and sentenced to six months in jail, with all but one day suspended, and was issued another Protective Order prohibiting his contact with the victim. Under Guideline E, the SOR alleged that Applicant deliberately failed to disclose the foregoing arrests on his 2022 security clearance application, and that he was also charged with

three driving offenses and a related Probation Violation between 2019 and 2021. The Judge found in favor of Applicant on the single Guideline F allegation, but against him on all Guideline J and Guideline E allegations.

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. 00-0050, 2001 WL 1044490 at *1 (App. Bd. Jul. 23, 2001). On appeal, Applicant makes no assertion of error on the part of the Judge. Rather, he reiterates generally the same limited explanations he submitted in response to the SOR. The Appeal Board does not review cases *de novo*, and our authority to review a case is limited to matters in which the appealing party has raised a claim of harmful error. Applicant has not alleged any such harmful error. Accordingly, the Judge's decision is affirmed.

Order

The decision is **AFFIRMED**.

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Chair, Appeal Board

Signed: Gregg A. Cervi

Gregg A. Cervi
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board