

Date: November 8, 2023

---

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

---

ISCR Case No. 21-02236

**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 January 11, 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 D (Sexual Behavior), and F (Financial Considerations) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective Jun. 8, 2017) and DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Department Counsel requested a hearing. On September 5, 2023, after the record closed, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Braden M. Murphy denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged under Guideline J that Applicant was arrested and charged in 2020 for indecent liberties with a child. He pled to contributing to the delinquency of a juvenile. He also received non-judicial punishment in 2014 while on active duty for wrongful appropriation of another person’s property. The 2020 incident was cross-alleged under Guideline D, as well as an

allegation that in 2021, his six-year-old daughter reported seeing him inappropriately touching himself while watching pornography. Finally, the SOR alleged, under Guideline F, six delinquent debts.

The Judge found against Applicant on the contributing to the delinquency of a juvenile conviction under Guidelines J and D. He found the remaining SOR allegations to be mitigated. In summarizing the decision, the Judge found that although Applicant completed probation, his conduct was too recent and too serious to be considered fully mitigated under Guideline J. Further, he engaged in a pattern of conduct in which he wrongfully asserted a parental or mentor-like responsibility for vulnerable females. He did not show that his conduct occurred under such unusual circumstances or that it is unlikely to recur and does not cast doubt on his reliability, trustworthiness, or good judgment. Decision at 9. In addition, he found that the conduct was not mitigated under Guideline D for the same reasons as under Guideline J, and because it involved a 12-year-old child who was unable to give meaningful consent, and the conduct was not private or discreet. *Id.* at 11.

Applicant's appeal brief does not assert that the Judge committed any harmful error, nor does he dispute the Judge's findings or conclusions. Rather, it merely argues that he took responsibility for his actions, completed probation, has not engaged in similar behavior since, and is a valued and respected employee. Appeal Brief at 1. Applicant's argument amounts to a disagreement with the Judge's weighing of the evidence, which is not sufficient to demonstrate that he weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *Id.*

The Appeal Board does not review cases *de novo*. The Board's authority to review a case is limited to cases in which the appealing party has alleged the Judge committed harmful error. Directive ¶ E3.1.32. Because Applicant has not alleged such a harmful error, the decision of the Judge denying Applicant security clearance eligibility is sustainable.

**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: Gregg A. Cervi  
Gregg A. Cervi  
Administrative Judge  
Member, Appeal Board