

DEPARTMENT OF DEFENSE

DEFENSE LEGAL SERVICES AGENCY DEFENSE OFFICE OF HEARINGS AND APPEALS APPEAL BOARD POST OFFICE BOX 3656 ARLINGTON, VIRGINIA 22203 (703) 696-4759

		Date: April 19, 2023
In the matter of:)	
)	
)))	USA-C Case No. 22-02418-R
Applicant for Security Clearance)))	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT Pro se

On November 2, 2020, Department of Defense (DoD) issued a statement of reasons (SOR) advising Applicant that his conduct raised security concerns under Guideline J (Criminal Conduct) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). On October 25, 2022, DoD Consolidated Adjudication Services (CAS) revoked Applicant's eligibility for access to classified information, and he appealed that revocation under the provisions of DoD Manual (DoDM) 5200.02.

On December 2, 2022, Under Secretary of Defense (Intelligence & Security) Ronald Moultrie issued a memorandum that DoD civilian or military personnel whose clearance eligibility was revoked or denied between September 30, 2022, and the date of that memorandum shall be provided the opportunity to pursue the Defense Office of Hearings and Appeals (DOHA) hearing and appeal process set forth in the Directive. As a result of Secretary Moultrie's memo, Applicant was given the opportunity to receive the process set forth in the Directive, and he elected that process. Tr. at 4.

On March 2, 2023, after holding a hearing, DOHA Administrative Judge Carol G. Ricciardello denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that a Joint Personal Adjudication System Incident Report of May 29, 2020, disclosed that Applicant was arrested on or about May 24, 2020, for the felony charge of Torture/Willful Abuse of a Child-Family. The Judge found:

On December 1, 2022, Applicant voluntarily accepted a plea agreement to have the felony charge reduced to the misdemeanor of harassment. He was represented by his criminal defense attorney. His plea of guilty was accepted and the court adjudicated his guilt. He was given a three-month jail sentence that was suspended for two years and was placed on probation for two years. He was also given a fine and required to pay court costs. (GE 5)

On December 23, 2022, Applicant filed a motion to set aside his guilty plea. The motion was granted on February 9, 2023, and the plea agreement was set aside. The plea to harassment was removed and the original case has been reinstated, which means the pending charge of child abuse is a felony. As of February 13, 2023, a trial by jury date had not been scheduled. [Decision at 5.]

In her analysis, the Judge concluded there was substantial evidence to prove that Applicant intentionally struck his child with a belt on the buttocks and bare legs, which left welts. The Judge further concluded that Applicant's conduct casts doubt on his good judgment, trustworthiness, and reliability, and that he presented insufficient evidence to mitigate the security concerns arising from such conduct.

Applicant's appeal brief contains new evidence that the Appeal Board is prohibited from considering. Directive ¶E3.1.29. His brief does not assert that the Judge committed any harmful error. 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. 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: Allison Marie Allison Marie Administrative Judge Member, Appeal Board