



**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: February 28, 2024

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

ISCR Case No. 21-02339

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 19, 2022, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline D (Sexual Conduct), Guideline E (Personal Conduct), Guideline F (Financial Considerations), and Guideline J (Criminal 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 December 11, 2023, Defense Office of Hearings and Appeals Administrative Judge Braden M. Murphy denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant is in his mid-40s and is married with two teenaged children. He served in the military for over 19 years, at which time he was administratively separated with a general discharge under honorable conditions as a result of the commission of a serious offense. The underlying misconduct stemmed from an incident in which Applicant was alleged to have made inappropriate sexual comments to a female Sailor and touched her breast. Those allegations were investigated by the Naval Criminal Investigative Service. Government Exhibit 6. Applicant’s commanding

officer addressed the allegations at a non-judicial punishment proceeding and found him guilty of having made inappropriate sexual comments and having touched the Sailor's breast without her consent. Those findings were upheld on appeal. Government Exhibit 5. This conduct formed the basis for the Guideline D and Guideline E allegations in the SOR. Applicant admits to having made inappropriate comments but denies the sexual contact.

Under Guideline F, the SOR alleged seven delinquent debts totaling approximately \$32,000. Applicant avers that these delinquencies accrued while he was under the financial strain resulting from his discharge from the military and that he is making progress towards resolving them.

The Judge found against Applicant as to the Guidelines D, F, and J allegations but concluded that the Guideline E allegation was duplicative.

On appeal, Applicant reiterates the arguments he made at hearing but does not make any specific allegation of harmful error. The Appeal Board does not review cases *de novo* and is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29. In essence, Applicant is advocating for an alternative weighing of the evidence. An applicant's disagreement with the judge's weighing of the evidence or an ability to argue for a different interpretation of the evidence is not sufficient to demonstrate the judge 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. 7, 2007). 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 made such an allegation of error, the decision of the Judge denying Applicant's security clearance eligibility is sustainable.

Order

The decision is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board

Signed: James B. Norman

James B. Norman
Administrative Judge
Member, Appeal Board