



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: June 30, 2025

In the matter of:)
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ISCR Case No. 23-01593

Applicant for Security Clearance)
_____)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Lauren A. Shure, Esq., Department Counsel
Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Bradley P. Moss, Esq.
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The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 19, 2023, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline D (Sexual Behavior), Guideline J (Criminal Conduct), 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 July 5, 2024, the Government amended the SOR in its entirety.¹ On March 14, 2025, Defense Office of Hearings and Appeals Administrative Judge Erin C. Hogan granted Applicant national security eligibility. The Government appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

¹ Unless otherwise indicated, all references herein to the SOR and its allegations are to the amended SOR.

Background

Applicant is in his early thirties. In 2010, when he was 17 years old and in high school, he was granted national security eligibility with SCI access for a work study program with another government agency (AGA), which required him to undergo a polygraph examination. It was during the polygraph pre-test interview that Applicant first discussed pornography. He disclosed accessing pornographic images and video via two specific websites, including Website A.² According to the polygrapher's report, Applicant expressed concern that, since 2008, he had inadvertently viewed no more than 10 images of topless girls, whom he believed were between 15 and 17 years old. He also disclosed that he inadvertently watched a 1-minute video of a girl dancing and stripping to full nudity, who he estimated was between 15 and 16 years old. He denied intentionally seeking child pornography and stated his intention to stop visiting Website A and the other site. The polygrapher noted that Applicant was visibly distressed in response to the topic, as indicated by his crying and shaking.

After Applicant graduated from college in May 2015, he began working with a defense contractor and initiated a new investigation for security eligibility, which was granted with SCI access in about January 2016.³ Subsequently, and separate from his defense contractor position, Applicant sought a new position with AGA in about 2017, which required him to undergo another polygraph examination in September and November 2017.⁴ He was approximately 24 years old at the time.

During the September 2017 pre-test interview, Applicant volunteered that on four or five occasions since 2015, while he was viewing adult pornography on unrecalled websites, he saw banners that depicted certain acts of bestiality. Applicant denied having searched for the material, and asserted that banners unexpectedly popped up, displaying the material from four to ten seconds before he "scrolled past them."⁵ He affirmatively expressed surprise that the banners popped up because he had installed advertisement blockers on his computer about one-and-a-half years prior.

During the subsequent November 2017 pre-test interview, Applicant acknowledged that, beginning in 2007 or 2008, he intentionally sought bestiality pornography via Website A. He initially stated that he last sought the content in 2014; however, after additional questioning, he reported that he last sought the content earlier that same year, in 2017. He estimated viewing a total of 10 to 20 videos of this content and acknowledged masturbating on each occasion. He also acknowledged that he previously withheld the information because he was embarrassed.⁶

Applicant was also questioned about other pornography and disclosed that, beginning in 2007 or 2008 and continuing until as recently as three-to-six months prior to the interview, he had viewed between 10 and 50 images and videos of "softcore" underage pornography via Website A

² Government Exhibit (GE) 2 at 3.

³ Tr. at 74-75; GE 1 at 35.

⁴ Tr. at 75-76.

⁵ GE 3 at 4.

⁶ GE 4 at 2.

and another site. He believed the females were between 14 or 15 and 17 years old. According to the polygrapher's report, Applicant believed the females were underage because of their small faces and braces and because the environment of the content was indicative of an underage female.⁷

Applicant further disclosed that, on approximately 20 occasions since about 2015 and continuing to about one month prior to the interview, he also visited Website A to download pictures of fully clothed females that were posted to the site by other individuals. Applicant believed the females were high school aged, between 14 or 15 and 17 years old. According to the polygrapher's report, Applicant again believed the females were underage because of their small faces and braces.⁸

Additionally, Applicant disclosed that he had pirated over 1.5 terabytes of pornography to external hard drives, some of which originated from Website A. Most of the material was illegally downloaded from Website B, which Applicant described as a private group for pornography requiring users to sign up for an account. Applicant created a fake name and email for his account, and he stated that he used Website B because it was not easily traceable by the Federal Bureau of Investigation. While Applicant averred that the hard drive contained adult pornography, he was uncertain if the drive still housed the underage pornography or if he deleted it.⁹

Applicant initiated a new eligibility investigation in 2021 and, during his July 2022 background interview, asserted that he never illegally downloaded or viewed child pornography.

Based on the foregoing information, the SOR alleged concerns under Guidelines D, J, and E. In his July 2024 response to the SOR, Applicant admitted to viewing pornographic images and video between 2007 and 2017 (SOR ¶¶ 1.a, 2.a, 3.a), and to downloading pictures of females posted online by others between 2015 and 2017 (SOR ¶¶ 1.b, 3.a), but he denied that any of the material depicted underage individuals. Applicant also admitted having sought bestiality pornography beginning in 2007 (SOR ¶¶ 1.c, 3.a), but he claimed that it ceased in 2015. He also admitted having maintained over 1.5 terabytes of pornography on an external hard drive, most of which was illegally downloaded from Website B because it was not easily traceable by the FBI (SOR ¶¶ 2.b, 3.a). Applicant averred that he discontinued both consuming bestiality and illegally downloading pornography in 2017. Turning to the falsification allegations, Applicant denied having lied about viewing underage pornography during his July 2022 interview (SOR ¶ 3.b) on the basis that he had "never downloaded or viewed actual child pornography."¹⁰ He averred that he had no concrete basis to believe that he ever viewed underage pornography, and any contrary statements he made during prior investigations were purely speculative. Finally, Applicant admitted that, during the September 2017 polygraph interview, he did not disclose that he had "*searched out* bestiality pornography" (SOR ¶ 3.c) but denied the resulting "insinuation that [he] had concealed the fact that [he] *viewed* bestiality pornography," which he did disclose.¹¹

⁷ *Id.* at 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ SOR Response at 4.

¹¹ *Id.*

Scope of Review

On appeal, the Board does not review a case *de novo*, but rather addresses material issues raised by the parties to determine whether there is factual or legal error. When a judge's factual findings are challenged, the Board must determine whether the "findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1.

When a judge's ruling or conclusions are challenged, we must determine whether they are arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. A judge's decision can be arbitrary or capricious if: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See* ISCR Case No. 95-0600, 1996 WL 480993 at *3 (App. Bd. May 16, 1996) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). In deciding whether a judge's rulings or conclusions are contrary to law, the Board will consider whether they are contrary to provisions of Executive Order 10865, the Directive, or other applicable federal law. *See* ISCR Case No. 03-22861 at 2 (App. Bd. Jun. 2, 2006).

When an appeal issue raises a question of law, the Board's scope of review is plenary. *See* DISCR OSD Case No. 87-2107, 1992 WL 388439 at *3-4 (App. Bd. Sep. 29, 1992) (citations to federal cases omitted). If an appealing party demonstrates factual or legal error, then the Board must consider the following questions: (1) Is the error harmful or harmless?; (2) Has the nonappealing party made a persuasive argument for how the judge's decision can be affirmed on alternate grounds?; and (3) If the judge's decision cannot be affirmed, should the case be reversed or remanded? *See* ISCR Case No. 02-08032 at 2 (App. Bd. May 14, 2004).

Discussion

There is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government produces evidence raising security concerns, an applicant bears the burden of persuasion concerning mitigation. *See* Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that a clearance may be granted only when "clearly consistent with the interests of the national security." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." AG ¶ 2(b).

On appeal, the Government argues that the Judge made certain harmful factual errors and that her application of the mitigating conditions and analysis under the Whole-Person Concept were arbitrary, capricious, and not supported by the record evidence. For the following reasons, we reverse the Judge's favorable decision.

Conflicting Evidence and Credibility Determination

Underlying all claims of error raised on appeal is the Government's argument that the Judge afforded Applicant a favorable credibility assessment despite significant conflicting record evidence, without sufficient explanation and, in some instances, without addressing the unfavorable evidence at all. These arguments have merit.

Although a judge is not required to discuss every piece of record evidence, she "cannot ignore, disregard, or fail to discuss significant record evidence that a reasonable person could expect to be taken into account in reaching a fair and reasoned decision." ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007). Furthermore, when conflicts exist within the record, a judge must weigh the evidence and resolve such conflicts based upon a careful evaluation of factors such as the evidence's "comparative reliability, plausibility and ultimate truthfulness." ISCR Case No. 05-06723 at 4 (App. Bd. Nov. 14, 2007). The record in this case contains multiple evidentiary conflicts that, though all were resolved in Applicant's favor, went unaddressed in the decision. As discussed, below, the Judge's failure to identify significant unfavorable record evidence or sufficiently evaluate its comparative reliability with Applicant's favorable post-SOR explanations was error.

Pre-Polygraph Interviews

Only after receiving the original SOR did Applicant first suggest that his disclosures of having consumed underage pornography were the result of high-pressure polygraph interviews and aggressive polygrapher tactics.¹² He did not deny having made the statements recorded from those interviews but contended that they were false admissions.

An applicant's polygraph admissions carry evidentiary weight and are due enhanced credibility when against the applicant's interest.¹³ Accordingly, recantations of such admissions must be supported by persuasive evidence to overcome their significance.¹⁴ In support of his recantations, Applicant offered only his own recollection that the polygraphers' interview tactics were aggressive, describing that they focused intensely on the topic and asked repeated questions to identify details such as ages and numbers of occurrences.

The Judge credited Applicant's explanation, finding that he "has consistently denied that he deliberately illegally downloaded or viewed child pornography" and that, while he had no proof

¹² See, e.g., Applicant Exhibit (AE) A at 1 ("[T]he polygraph examiner really leaned on the child pornography allegations and it got to the point that I was crying and I was very upset and I wanted it to end and I felt trapped and just started to go along with what she said."); *id.* at 5 ("The examiner was drilling me for ages and numbers. It was a high pressure interview and I just said something to get it over with."); Tr. at 77 ("they really started drilling down and trying to get me to admit to something."); *id.* at 91 ("I kind of cracked under pressure.").

¹³ See ISCR Case No. 07-18324 at 6 (App. Bd. Mar. 11, 2011) (citing Rothstein, Federal Rules of Evidence, Advisory Committee's Note to Rule 804(b)(3): "The circumstantial guaranty of reliability for declarations against interest is the assumption that persons do not make statements which are damaging to themselves unless satisfied for good reason that they are true."). See also ISCR Case No. 10-04325 at 4 (App. Bd. Aug. 15, 2013).

¹⁴ See, e.g., ISCR Case No. 10-08257 at 4-5 (App. Bd. Dec. 12, 2011) (quoting *United States v. Villalpando*, 588 F.3d. 1124, 1128 (7th Cir. 2009)) (Applicant's false admission claim was unsupported where record lacked evidence that the admission was "the result of physical abuse, psychological intimidation, or deceptive interrogation tactics' sufficient to overcome the free will of a reasonable person.").

that they were underage, he “told the polygrapher that while searching for adult pornography, several images popped up that he believed the girls appeared to be younger than 18 because some of them wore braces.” Decision at 12, 15. The Judge did not address why the detailed polygraph admissions – made to two polygraphers, seven years apart, and both more contemporaneously to the conduct in question – were outweighed by Applicant’s recent and uncorroborated recantation.

The Board’s deference to a judge’s credibility determination is not without limits. When the record contains a basis to question an applicant’s credibility, the judge “should address that aspect of the record explicitly,” explaining why she finds an applicant’s explanation to be trustworthy in light of the record as a whole. ISCR Case No. 07-10158 at 5 (App. Bd. Aug. 28, 2008). Here, the Judge’s failure to explain how she found Applicant’s explanations credible in light of his polygraph admissions and other record evidence that detracts from his candor and trustworthiness was error.¹⁵

Psychological Evaluation

In January 2024, in between submitting his responses to the original and amended SORs, Applicant participated in a psychological evaluation with Dr. E, a Board-Certified Psychologist. The Judge appears to have given great weight to Dr. E’s evaluation, the favorable elements of which were summarized over two pages of factual findings, and she relied upon his favorable prognosis and conclusion in finding mitigation of the Guideline D concern.¹⁶ The Judge failed, however, to acknowledge relevant inconsistent information provided during the evaluations.

For example, Applicant described that, during the 2017 pre-polygraph interview, he “snapped under pressure” and “did admit to accidentally seeing something that [he] thought might be child porn and [he] reported it to the FBI through the anonymous report link on their web site.”¹⁷ Contrary to this statement, there is no information in the interview reports that Applicant ever disclosed reporting child pornography to the FBI, and his suggestion that this “accidental” viewing occurred once (leading to the alleged FBI reporting) dramatically varies from the 10-to-50 instances of viewing underage pornography that Applicant admitted during the interview.

Regarding the allegation about downloading approximately 20 images of fully clothed underage girls, Applicant stated, “I scrolled past something and saw clothed images of younger

¹⁵ Additionally, applicants are held to the standard expected of a reasonable person in the same or similar circumstances. *See* ISCR Case No. 10-08257 at 3. Even assuming, *arguendo*, that a reasonable 17-year-old may have been so flustered by an intense polygraph interview that he falsely admitted conduct, the same concession is much harder to afford to a reasonable 24-year-old college graduate who is experienced in the national security eligibility process and has undergone multiple prior polygraph examinations.

¹⁶ AG ¶ 14(e): the individual has successfully completed an appropriate program of treatment, or is currently enrolled in one, has demonstrated ongoing and consistent compliance with the treatment plan, and/or has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment. The Judge concluded that the condition applied “because Dr. E., a licensed clinical psychologist, assessed Applicant and gave him a good prognosis. He concluded that Applicant did not exhibit any symptoms associated with paraphilic disorder or pedophilia. His prognosis for continued well-functioning was excellent.” Decision at 13. Because AG ¶ 14(e) requires a finding of “[sexual] behavior [that] is readily controllable with treatment,” and the record is devoid of any such finding, the Judge’s application of this condition to the Guideline D concern was erroneous.

¹⁷ AE A at 2.

people, but scrolled past it. I have no idea how old they were.”¹⁸ This explanation to Dr. E suggests that Applicant’s contact with the material was accidental and he quickly passed it, which directly conflicts with other evidence from both before and after the evaluation. During the November 2017 interview, Applicant admitted that he specifically visited Website A to download pictures of fully clothed females, whom he estimated were between 14 and 17 years old due to their physical attributes. At the December 2024 hearing, in response to why he downloaded pictures of these fully clothed females to his computer, Applicant responded, “Probably to admire them in a similar aspect that one would any, you know, attractive person of the gender that you’re attracted to.”¹⁹ The decision is silent regarding the conflicting, and inarguably false, disclosure made to Dr. E.

Regarding the allegation about bestiality, Applicant told Dr. E that he visited a site for the content “when [he] was in college” because it “was such a foreign concept to [him] that somebody would do something with an animal that [he] just went to see what it was,” and stated that “[i]t wasn’t arousing.”²⁰ Applicant’s disclosure to Dr. E minimized the duration, frequency, and purpose of Applicant’s seeking this content, which at other points he described as having occurred beginning in 2007 (when he was about 14 years old), as recently as early 2017 (when he was about 24 years old), and resulted in his masturbating to the content.

In summary, the record reflects that Applicant repeatedly mischaracterized the nature and extent of his involvement with pornography during the evaluation, contradicting many of the admissions he made not only during polygraph interviews, but also in his SOR response and at hearing. This behavior is additional – and quite recent – evidence of Applicant’s continued failure to provide complete and candid information throughout this process. The inconsistencies cast doubt on both Applicant’s credibility and the reliability of the psychologist’s conclusions, which were based on flawed input. The Judge’s failure to grapple with these discrepancies undermines her reliance on the evaluation and further detracts from the reasonableness of her favorable credibility determination.

Other Evidence Impacting Credibility

Additional evidence went unaddressed by the Judge that further reflects upon Applicant’s trustworthiness, judgment, and reliability, and detracts from a favorable credibility determination. For example, despite experiencing certain physical manifestations in response to the topic of pornography during his 2010 interview (and, according to Applicant, such extreme mental stress that he falsely admitted to viewing underage pornography), and despite his stated intention at the time to stop visiting Website A, Applicant continued visiting this site for at least seven more years.

Additionally, throughout her decision and specifically in her mitigation analysis, the Judge found that Applicant did not continue seeking bestiality pornography or illegally downloading

¹⁸ *Id.* at 4.

¹⁹ Tr. at 116.

²⁰ AE A at 5.

pornography after being granted national security eligibility in 2017.²¹ Aside from Applicant's SOR response, however, the record does not support that Applicant was granted any eligibility in 2017. Although he applied for a new job with AGA and underwent polygraphs in 2017, the result of that investigation is unclear from the record. Rather, as discussed above, Applicant was granted eligibility and SCI access in January 2016 while working for a defense contractor.

The record is therefore clear that Applicant engaged in certain security-significant conduct, that even he admits included illegally downloading pirated pornography through a website intentionally selected to evade FBI detection, *for nearly two years while granted national security eligibility*. This conduct warranted discussion in terms of its relevance under Guidelines J and E, where ongoing behavior inconsistent with national security responsibilities is highly probative, and the Whole-Person Concept.

The Judge erred in failing to acknowledge and weigh this large body of conflicting evidence, which impacted upon her credibility assessment and, as a result, her analysis of the SOR concerns.

Falsifications Under Guideline E

The Directive is clear that an applicant's failure to provide truthful and candid answers during a national security investigation is of special concern and the refusal to provide full, frank, and truthful answers will normally result in an unfavorable determination. AG ¶ 15. In cases involving the deliberate omission, concealment, or falsification of material information, an applicant has a "heavy burden in demonstrating evidence of reform, rehabilitation, or changed circumstances sufficient to justify a conclusion that it is clearly consistent with the national interest to grant him access to classified information." ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002).

SOR ¶ 3.b – Falsification of July 2022 Background Interview

Noting Applicant's explanations that he "only searched for adult pornography," "did not search for pornographic images of girls under the age of 18," "had no proof that the women were under age 18," and only "told the polygrapher that while searching for adult pornography, several images popped up that he believed the girls appeared to be younger than 18 because some of them wore braces," the Judge found that there was insufficient evidence to conclude that Applicant sought out or downloaded child pornography (SOR ¶¶ 1.a, 2.a, 3.a). Decision at 12. To reach this conclusion, she discounted his 2010 and 2017 polygraph interview admissions of having consumed underage pornography, and instead credited his post-SOR explanation – that his disclosures were the result of high-pressure polygraph interviews and aggressive polygrapher tactics. As a result of her finding no *prima facie* case for the underlying conduct, the Judge also found no *prima facie*

²¹ See, e.g., Decision at 13 (Under Guideline D mitigation, "He stopped viewing and downloading pornography after being granted a security clearance in 2017."); *id.* at 14 (Under Guideline J mitigation, "He has not engaged in [illegally downloading pornography] since he was granted a security clearance in 2017."); *id.* at 16 (Under Guideline E mitigation, "Applicant has not searched, viewed, or downloaded pornography since 2017, after being granted a security clearance.").

case that Applicant deliberately falsified related information during his July 2022 background interview (SOR ¶ 3.b). Decision at 15.

The Board must consider “not only whether there is evidence supporting a judge’s findings, but also whether there is evidence that fairly detracts from the weight of the evidence supporting those findings.” ISCR Case No. 97-0727 at 2 (App. Bd. Aug. 3, 1998). On appeal, the Government argues that it “established by substantial evidence that Applicant repeatedly and illegally viewed child pornography between 2008 through at least 2017, including while he held a security clearance” and that the Judge’s “favorable findings on this critical issue and the resultant finding that he did not lie to the DoD investigator in July 2022 are unsustainable, and her significant reliance upon them throughout the Decision constituted harmful error.” Appeal Brief at 17, 23. This argument has merit.

National security applicants are required to provide full, frank, and truthful disclosures throughout the investigation and adjudication processes. Directive ¶ 6.2. The obligation for candor during this process is at the heart of Guideline E. AG ¶ 15 (“Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.”).

Despite having discussed such conduct during multiple polygraph interviews in which the topic of underage pornography was central, when asked during the July 2022 background interview about the same topic, Applicant apparently concisely asserted that he has never illegally downloaded or viewed any child pornography. Putting aside the veracity of the polygraph admissions themselves and even assuming most favorably for Applicant that “no” was a technically correct response to the specific question, *it was not a full, frank, and candid response to the topic*. A deliberate omission, though potentially distinguishable from a falsehood, can serve to impede the search for truth and thereby interfere with the integrity of the national security process.²² Applicant’s incomplete response therefore had security significance under Guideline E independent from the underlying conduct, and the Judge’s finding that the Government failed to make a *prima facie* case for this allegation was in error. A person holding a security clearance has a duty to *fully* disclose conduct of security concern when asked, and the record supports a conclusion that Applicant failed in this regard.

SOR ¶ 3.c – Falsification of September 2017 Pre-Polygraph Interview

After finding that Applicant falsified information about his consumption of bestiality pornography during his September 2017 pre-polygraph interview,²³ the Judge went on to find

²² See ISCR Case No. 01-03132 at 2 (App. Bd. Aug. 8, 2002) (“If an applicant gives narrowly worded, technically correct answers to an investigator’s questions, but deliberately fails to tell the investigator the whole truth, then the applicant is not providing full, frank and candid answers to the investigator. . . . An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program.”).

²³ AG ¶ 16(b): deliberately providing false or misleading information; or concealing or omitting information concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

mitigation through AG ¶ 17(c). She concluded that Applicant fully disclosed the information during the November interview and that his maturity, engagement to marry, and professional recommendations indicated that the conduct is unlikely to occur. The Government argues that the Judge erred in applying AG ¶ 17(c) to this established falsification. We agree.

AG ¶ 17(c) applies when the conduct: 1) is unlikely to recur because it is so minor or infrequent or happened so long ago or under such unique circumstances; and 2) does not cast doubt on the individual's reliability, trustworthiness, or good judgment. Application of this condition explicitly requires a showing that the subject conduct – here, an intentional falsification – is unlikely to recur. An applicant's acknowledgement of concerning conduct is an initial step in demonstrating acceptance of responsibility for his actions to support that recurrence is unlikely. When an applicant is unwilling or unable to accept such responsibility, that failure "is evidence that detracts from a finding of reform and rehabilitation." ISCR Case No. 96-0360 at 3 (App. Bd. Sep. 25, 1997). Here, the record does not support that Applicant is unlikely to falsify material information in the future.

Applicant's only acknowledgement of having intentionally falsified information in his September 2017 interview came after that unsuccessful attempt to conceal the underlying behavior, which triggered further interviewing in November 2017, at which point he admitted that he intentionally withheld the information due to embarrassment. The Judge gave Applicant credit for this eventual disclosure, noting only that, while he "was not forthcoming during his September 2017 polygraph interview about searching for bestiality pornography on the internet, he fully disclosed this fact to the polygrapher who conducted the second polygraph test." Decision at 16. First, the Judge's finding that Applicant "fully disclosed" the conduct to the polygrapher during the second interview leaves out that he initially provided further false information by stating that the conduct ceased in 2014. It was only after further questioning that he revealed that the conduct continued until earlier that same year in 2017. Applicant's disclosure was not voluntary; it came only after he first tried to conceal the information in September, was caught, tried to minimize the information in November, and was questioned further. This undercuts the credit afforded to the eventual disclosure and contributes to the concerns about his willingness to voluntarily disclose security-significant conduct.

Significantly, Applicant has never again acknowledged that his September 2017 falsification was an intentional concealment but has instead, throughout the entirety of this adjudication, consistently and flatly denied having intentionally concealed the information in September. For example, in response to the SOR, Applicant stated:

I admit I did not disclose during my September 1, 2017, polygraph examination that I had searched out bestiality pornography. I deny the insinuation that I had concealed the fact that I had viewed bestiality pornography, as I disclosed that I had in the September 1, 2017, polygraph examination.²⁴

²⁴ SOR Response at 4.

Applicant seems to suggest that his volunteering some sort of information about bestiality during his September 2017 interview is evidence that he was not trying to conceal the information. This argument carries no weight considering that the information he disclosed was patently false in terms of timeframe, frequency, and his active participation.

At hearing, regarding whether he felt disappointed in himself after the September interview for having not told the truth about bestiality pornography, he responded, “The thought didn’t really cross my mind. I answered the questions that were asked of me. They didn’t probe too deeply into the bestiality portion.”²⁵ He affirmatively averred, “I had resolved to tell the truth at every polygraph I’ve entered.”²⁶

In summary, despite admitting during the November interview that he actively withheld the information about bestiality during his interview in September, Applicant has subsequently and consistently denied having intentionally concealed the information. The Judge did not address Applicant’s continued failure to admit and take responsibility for the established falsification, which leads to AG ¶ 17(c) failing at the outset due to the required showing that the conduct is unlikely to recur.²⁷ Considering the record as a whole, the Judge’s mitigation of this concern through AG ¶ 17(c) is not sustainable.

Guideline D and Guideline J

Applicant’s repeated failure to provide full and candid information during multiple national security investigations and adjudications fatally undermines the Judge’s favorable credibility determination. Absent the falsifications and material omissions addressed, above, the underlying conduct as alleged in the SOR could arguably have been mitigated by the passage of time. Applicant’s continued dishonesty, however, raises questions about whether he has ever been completely candid about the nature, duration, or cessation of any of the conduct alleged in the SOR. Accordingly, the Judge’s reliance on the unexplained and unsupported credibility determination renders the resultant favorable findings under Guidelines D and J unsustainable.

Conclusion

When the Board finds that a judge’s decision is unsustainable, we must determine if the appropriate remedy is remand or reversal. The former is appropriate when the legal errors can be corrected through remand *and* there is a significant chance of reaching a different result upon correction, such as when a judge fails to consider relevant and material evidence. If the identified errors cannot be remedied on remand, the decision must be reversed. Such is the case when, after addressing the identified error, the Board concludes that a contrary formal finding or overall grant

²⁵ Tr. at 110. Indeed, Applicant’s tendency to not fully disclose information and only answer the very specific questions asked of him is a sentiment evidenced throughout the record, and it calls into question his willingness or ability to volunteer security significant information in the context of having access to classified information.

²⁶ *Id.*

²⁷ Moreover, Applicant misled Dr. E about his involvement with bestiality pornography in January 2024 when he minimized the nature, duration, and intent of his conduct. This evidence does more than undercut a finding that Applicant’s falsifications are unlikely to recur – it reflects that further falsifications during the national security process are *likely*.

or denial of security clearance eligibility is the clear outcome based on the record. ISCR Case No. 22-01002 at 4 (App. Bd. Sep. 26, 2023) (citation omitted).

The Government has met its burden on appeal of demonstrating reversible error below. Considering the record as a whole, the Judge's decision is arbitrary and capricious as it fails to examine relevant evidence and important aspects of the case, fails to articulate a satisfactory explanation for material conclusions, and runs contrary to the weight of the record evidence. Accordingly, the Judge's favorable decision is not sustainable under *Egan*. After addressing the identified errors, the Board concludes that a denial of security clearance eligibility is the clear outcome based on the record and the Judge's favorable decision is reversed.

Order

The decision in ISCR Case No. 23-01593 is **REVERSED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board

Signed: Jennifer I. Goldstein

Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board