**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: August 8, 2025

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| In the matter of: | ) | |
| ---------- | ) | ISCR Case No. 22-01200 |
| Applicant for Security Clearance | ) | |

# APPEAL BOARD DECISION

## APPEARANCES

**FOR GOVERNMENT**
Andrea M. Corrales, Esq., Deputy Chief Department Counsel

**FOR APPLICANT**
*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 10, 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 E (Personal Conduct), Guideline J (Criminal Conduct), and Guideline M (Use of Information Technology) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) (SEAD 4) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On March 27, 2025, Defense Office of Hearings and Appeals Administrative Judge LeRoy F. Foreman denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline D, the SOR alleged that Applicant viewed child pornography from about 1988 to 2011, and that he used his company-issued computer to view child pornography and other pornography on multiple occasions. The same conduct was cross-alleged under Guideline J and Guideline E. Under Guideline E, the SOR also alleged that Applicant falsified material facts during personal subject interviews (PSI) in October 2011 and July 2017 by seeking to conceal the information alleged under Guideline D. Under Guideline M, the SOR alleged that Applicant

manipulated software without authorization when he intentionally circumvented firewall and content filters while working, in order to view pornography. The Judge found for Applicant on one of the Guideline D allegations as duplicative, and he found the Guideline M allegation to be mitigated. Those favorable findings are not in issue on appeal, and the Judge's findings and conclusions pertaining to them will not be addressed below. The Judge found adversely to Applicant on all remaining allegations under Guideline D, Guideline E, and Guideline J.

## Background

Applicant is in his late 60s and has earned multiple master's degrees and a doctorate. Married for almost forty years, he has three adult children. Applicant was granted security clearance eligibility in 1997 and access to sensitive compartmented information (SCI) in 2011.

Upon his application for SCI eligibility, Applicant underwent a series of polygraph examinations with another government agency (AGA) between May and November 2011. According to the polygrapher's report from the May 2011 examination, Applicant disclosed during a pretest interview that he accidentally viewed adult pornography while searching at work for movie and celebrity information. In a post-test discussion, Applicant reported that he used the search terms "Asian woman" and "Asian movie star" and that, when he clicked on the resulting site, he briefly viewed thumbnails of both fully clothed Asian women and some naked women. He admitted viewing about 200 images while at work.

At hearing, Applicant admitted that he searched for "Asian Women" or "Asian Movie Stars" during his lunch hour, but he denied that he searched for pornography at work. He also denied admitting to the polygrapher during his May 2011 interview that he viewed pornography at work. Applicant admitted telling the polygraph examiner that he opened a webpage containing images of girls who appeared to be 12 or 13 years old, but he testified that he immediately closed it and did not download any images or content. Although the polygrapher's report stated that all the information was reviewed with Applicant and that he concurred in its accuracy, Applicant testified at hearing that he never had a chance to review the accuracy of the report.

In September 2011, Applicant underwent another polygraph examination. According to the polygraph examiner's report, Applicant stated that he searched for images on Google using terms such as "teenage girls" or "Lolita" but that he never deliberately viewed images of anyone he thought was under 18 years old. At hearing, Applicant denied giving the polygraph examiner specific search terms such as "teenage girls" or "Lolita."

In a pretest interview for his next polygraph examination in October 2011, Applicant denied intentionally seeking pornography involving anyone under the age of 18 and denied viewing any website that did not include a legal disclaimer stating that all the persons portrayed are 18 years old or older. In the post-test discussion, Applicant stated that he had accidentally opened files containing images of females between 13 and 15 years old. At hearing, he admitted telling the polygraph examiner that he accidentally opened these files.

In November 2011, Applicant underwent a final polygraph examination. During the pretest interview, he admitted that he sought out, viewed, became aroused by, and masturbated to child pornography about once a month from 1988 until he was interviewed in September 2011. His SCI

eligibility was revoked in March 2012. Applicant appealed the revocation through the AGA. His eligibility for access to classified information was terminated on a date not clearly reflected in the record.

Applicant applied for reinstatement of his clearance in the spring of 2016. In his July 2017 PSI, Applicant told the investigator that his previous application for a clearance was denied because the polygraph examiner misinterpreted his answers to routine questions during the polygraph examination and that he did not know what was misinterpreted because he was unable to see the polygraph examiner's report.

At hearing, Applicant stated that he had viewed no pornography since 2011 and submitted a written statement that said, in part:

> I never thought that my actions of watching pornographic material could result in this revocation. . . . In a way, it has helped me to look back and see how numb my moral senses were while watching the adult pornographic materials. I am truly sorry that the adult video contains real people and they might have been models under 18 years old despite the fact that there was no way to [be] certain of their ages.

Decision at 4 (quoting Applicant Exhibit 20 at 8).

## Judge's Analysis

Under Guideline D, the Judge found that three disqualifying conditions were established.[1] The Judge acknowledged Applicant's claim that the polygraph examiners misinterpreted his statements during the pretest interviews and post-hearing discussions, but he highlighted that Applicant "was unable to identify what comments they might have misinterpreted" and that it was "not likely that three separate polygraph examiners would have misinterpreted his comments." Decision at 7. In his mitigation analysis, the Judge considered the applicability of AG ¶ 14(b),[2] noting Applicant's assertion that he has not viewed any pornography since his clearance was revoked in 2011 and the absence of any evidence to the contrary, but concluded:

> [Applicant] has a history of conflicting admissions, denials, and recantations that raise doubt about his credibility. In October 2011, he told an investigator that he opened files containing child pornography by accident. In November 2011, he told an investigator that his October 2011 statement was false. At the hearing, he recanted his November 2011 admission that his October 2011 statement was false. Applicant has the burden of establishing mitigating

[1] AG ¶¶ 13(a): sexual behavior of a criminal nature, whether or not the individual has been prosecuted; 13(b): pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop; and 13(c): sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.

[2] AG ¶ 14(b): the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or judgment.

> circumstances. He has not carried that burden with respect to AG ¶ 14(b).

Decision at 7. Similarly, the Judge concluded that AG ¶ 14(c)[3] was inapplicable as "Applicant's history of viewing [] child pornography continues to humiliate and embarrass him and make him vulnerable to coercion, exploitation, or duress." Decision at 7.

Under Guideline E, the Judge found that Applicant's history of viewing child pornography and of viewing adult pornography at work established AG ¶ 16(e) and that Applicant's falsifications during adjudication processes established AG ¶ 16(b).[4] Regarding the falsifications, the Judge specifically found as follows: that during the post-test discussion in October 2011, Applicant falsely told the polygraph examiner that he accidentally opened files containing images of females between 13 and 15 years old; and that during the July 2017 PSI, Applicant falsely told the investigator that his previous application for a clearance was denied because a polygrapher misinterpreted his answers during the polygraph examination. The Judge considered the potentially applicable mitigation conditions under Guideline E but determined that none fully applied for the following reasons: Applicant recanted prior admissions and continued to maintain that the allegations against him were based on the polygraphers' misinterpretation of his answers; he submitted no evidence of counseling or other steps to alleviate the stressors or circumstances that contributed to his involvement with pornography; and he remained vulnerable to coercion because of his past involvement with child pornography.

Under Guideline J, the Judge found that AG ¶ 31(b)[5] was established as Applicant admitted in the November 2011 pretest interview that he sought out and viewed child pornography from 1988 until he was interviewed in September 2011. Although significant time has passed, the Judge concluded that Applicant had not mitigated the security concerns as he has not accepted responsibility for his conduct, noting that "[w]hen an applicant is unwilling or unable to accept responsibility for his or her own actions such a failure is evidence that detracts from a finding of reform and rehabilitation." Decision at 9 (citation omitted).

## Discussion

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 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

[3] AG ¶ 14(c): the behavior no longer serves as a basis for coercion, exploitation, or duress.

[4] AG ¶¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes . . . : engaging in activities which, if known, could affect the person's personal, professional, or community standing; and 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.

[5] AG ¶ 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

ascribed to a mere difference of opinion." ISCR Case No. 95-0600 at 4 (App. Bd. May 16, 1996) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

On appeal, Applicant raises numerous issues and alleged errors, but they center on two arguments that relate to polygraph examinations: 1) the Judge erred in failing to consider Applicant's private polygraph results; and 2) the AGA polygraphers' inculpatory reports are not "real evidence [] such as criminal records" and do not meet the Directive's requirement for substantial evidence. Appeal Brief at 12.

Private Polygraph Results

We turn first to Applicant's argument that the Judge erred in refusing to consider his privately obtained polygraph results. In Applicant's Answer to the SOR (Answer), he included the results of a post-SOR private polygraph examination.[6] For purposes of that examination, Applicant completed and signed a written statement consisting of two sentences attesting that: 1) he did not circumvent his employer's firewall to watch child pornography; and 2) he had never searched for child pornography. Answer at 7. The polygraph examination consisted of the polygrapher asking Applicant if he falsified any information on the two-sentence statement. In the "Result" section of his report, the polygrapher stated: "It is the opinion of this examiner that [Applicant] was being truthful during testing." *Id*. at 6. Said differently, the polygrapher opined that Applicant was truthful when he denied that he had ever searched for child pornography.

The Judge took testimony from the polygrapher and confirmed that his examination consisted solely of this focused inquiry into truthfulness, with no substantive discussions about the allegations of child pornography. Transcript (Tr.) at 31-34. The Judge subsequently granted the Government's motion to exclude these results. Applicant challenges the exclusion of the polygrapher's results, arguing that it was "the key evidence in this case" and his "only [] hope." Appeal Brief at 1, 2.

Applicant's argument about the admissibility of his private polygraph results raises two discrete issues: 1) the admissibility of non-federal polygraphs; and 2) the distinction between the statements that a subject may make in polygraph interviews and the results of the polygraph examination itself – the polygrapher's technical opinion of whether a subject's responses indicated deception.

*Non-Federal Polygraph Examinations*

DoD Instruction 5200.02 establishes policy, assigns responsibilities, and prescribes procedures for the DoD Personnel Security Program (PSP), the objective of which is to "ensure persons deemed eligible for national security positions remain reliable and trustworthy."[7] Pursuant to that Instruction and under the "conditions, requirements, and limitations associated with

[6] Applicant also asserts that this favorable polygraph examination report was improperly removed from his investigative file prior to submission to DOHA and to the Judge, but our review of the record confirms that it was forwarded with his Answer.

[7] DoDI 5200.02, *DoD Personnel Security Program* (Mar. 21, 2014, as amended), ¶ E3.1.

polygraph use" prescribed by DoD Instruction 5210.91 and DoD Directive 5210.48,[8] "DoD Components are authorized to use polygraph examinations to resolve credible derogatory information developed in connection with a personnel security investigation; to aid in the related adjudication; or to facilitate classified access decisions." DoDI 5200.02 ¶ E3.5.[9] Those "conditions, requirements, and limitations" include adherence to rigorous standards,[10] the development, implementation, and oversight of which are vested in the National Center for Credibility Assessment (NCCA). *See* DoDI 5210.91 ¶ E3.2.[11] Because privately obtained polygraphs cannot be conducted in accordance with the conditions, requirements, and limitations of DoDI 5210.91 or DoDD 5210.48, they are not permissibly used in national security adjudications.[12] Accordingly, the Judge's exclusion of Applicant's proffered polygraph was proper under existing DoD policy.

*Polygraph Admissions vs. Results*

We turn next to the primary basis for the Government's motion in limine and the Judge's decision to exclude Applicant's polygraph result – the admissibility of polygraph results generally. Admissions made during polygraph interviews, as well as attempts to employ countermeasures to defeat a polygraph, are admissible in national security eligibility adjudications. DoDM 5200.02 § 7.12.c. *See also, e.g.*, ISCR Case No. 94-1057 at 6 (App. Bd. Aug. 11, 1995). On several occasions, the Appeal Board has distinguished between those admissions and the technical results of the polygraph examination itself (*i.e.*, the physiological data collected in response to test questions and the polygrapher's evaluation of that data and technical opinion as to whether the response indicates deception).

In seeking to exclude Applicant's polygraph results, the Government relied upon a 2018 Appeal Board decision – which cites in a footnote a 2006 Appeal Board decision – as authority to assert that "[t]he results of polygraph tests are not admissible in DOHA proceedings." Motion in

[8] DoDI 5210.91, *Polygraph and Credibility Assessment (PCA) Procedures* (Aug. 12, 2010, as amended); DoDD 5210.48, *Credibility Assessment Program* (Apr. 24, 2015, as amended). These regulations set forth the policy and procedures for using polygraphs in screenings and investigations throughout DoD, including in national security eligibility determinations.

[9] *See also* DoD Manual 5200.02, *Procedures for the DoD PSP* (Apr. 3, 2017), § 7.12.a (use of polygraphs is governed by DoDI 5210.91).

[10] *See, e.g.*, DoDI 5210.91 ¶¶ 4; E4.2 (Counterintelligence Scope and Expanded Scope Polygraphs require objective quality control (QC), time and test series limits on individual examination sessions, and audio or video recording, among other requirements); E7.1-2 (requiring QC procedures and quality assessment (QA) inspections).

[11] *See also, e.g.*, DoDI 5210.91 ¶¶ E3.4 (NCCA prescribes standards for QC, conducts QA inspections of DoD and other federal PCA programs, and develops and provides PCA training, continuing education, and examination procedures); E6 (certified polygraph examiners must generally graduate from the NCCA training program and satisfy other standards including completing 80 hours of NCCA-approved continuing education every two years).

[12] In a prior issuance of DoD Directive 5210.48, the use of non-federal polygraphs was explicitly prohibited in DoD screenings and investigations. *See* DoDD 5210.48, *Polygraph and Credibility Assessment Program* (Jan. 25, 2007, as amended), ¶ 4.5 ("DoD Components shall accept only PCA examinations and/or the results of such examinations that are conducted by Federal PCA examiners."). When that directive was reissued as the *Credibility Assessment Program* in April 2015, the language barring use of non-federal polygraphs was omitted; however, the restrictions imposed by DoDI 5200.02 by incorporating the requirements of DoDI 5210.91 and DoDD 5210.48 independently continue to bar non-federal polygraph use in national security eligibility determinations.

Limine at 2 (quoting ISCR Case No. 15-07539 at 5, n.3 (App Bd. Oct. 18, 2018) (citing ISCR Case No. 02-31428 (App. Bd. Jan. 20, 2006)). The Judge granted the Government's motion, relying on the 2006 decision to hold that "the results of a polygraph regarding the truthfulness of the statements made during the examination are not admissible." Decision at 2 (citing ISCR Case No. 02-31428 at 4). The Government's and Judge's reliance on those two cases is misplaced because, in both, the admissibility of polygraph results was simply not an issue before the Board and reference to them is only dicta.[13] Rather, DoD policy does not establish or contemplate a per se exclusion of polygraph results, but instead prohibits taking "adverse action" under the adjudicative guidelines "*solely* on the basis of polygraph examination technical calls." AG ¶ 1(c) (emphasis added). As a practical matter, the admission of this evidence over objection, even under DOHA's relaxed evidentiary rules, requires thorough inquiry,[14] which we need not address in this matter, having already addressed the proper exclusion of Applicant's private polygraph on other grounds.

AGA's Polygraphs

We turn finally to Applicant's argument that the Judge gave undue weight to the AGA polygraph reports and that those reports do not establish the Government's case by substantial evidence. The Government's case relied largely on Government Exhibit (GE) 2, which includes the adjudication file from the AGA. That file includes the polygraphers' reports from four different polygraph sessions, in which they detail the pretest and post-test interview discussions and the subsequent analysis of those reports by AGA personnel, which ultimately resulted in revocation of Applicant's SCI access in March 2012. Although the reports are summaries of what Applicant disclosed in the interviews, they are detailed and reflect evolving disclosures and admissions over the course of the four examinations. Notably, the summaries include significant and specific details about Applicant's history of viewing child pornography that the Judge elected not to include in his findings of fact. Applicant denies that he made the admissions that are reflected in those reports. Although the Judge characterized Applicant's claim to be that the polygraphers *misinterpreted* his statements, Applicant is arguing on appeal that the polygraphers actually *misrepresented* his answers and submitted "false" statements in their reports. Appeal Brief at 2, 9, 12, 17. Applicant acknowledges that he has "no evidence that all three examiners worked together to make the consistent allegations," but he nevertheless asserts that the "chief adjudicator" at the AGA "was directing all three examiners behind the doors." *Id*. at 14.

We have considered Applicant's arguments in light of the record as a whole and find them unpersuasive. First, his argument that the polygraphers' reports are not "real evidence" and cannot establish the Government's case is without merit. Applicant did not object to the admission of GE 2 but now argues that it should be given no weight, in part because he did not sign the summarized

[13] Additionally, the dicta found in the 2015 decision's footnote misstates and thereby inadvertently broadens the dicta from the relied-upon 2006 decision, which itself cites dicta from a Supreme Court decision. *Compare* ISCR Case No. 02-31428 at 4 (merely acknowledging the differences between polygraph admissions and results and citing *Wyrick v. Fields* for its dicta that "the results of the polygraph examination *might not* have been admissible evidence" under *Missouri* law. 459 U.S. 42, 48 n.* (1982) (emphasis added), *with* ISCR Case No. 15-07539 at 5, n.3 ("Statements made in response to questioning during a polygraph examination are admissible, although the results of the exam itself are not".).

[14] *See* ISCR Case No. 96-0785 at 3-4 (App. Bd. Sep. 3, 1998) (identifying non-exhaustive factors to be considered in judge's determination of the admissibility and weight of polygraph results).

reports and because the videotapes of the interviews were not provided. *Id*. at 17. Those facts were certainly proper matters for the Judge to consider in determining how much weight to give the polygraphers' reports. He ultimately determined that the reports established the allegations by substantial evidence, which we have frequently defined as more than a scintilla but less than a preponderance of the evidence. That conclusion is amply supported by the record.

Second, we are not persuaded by Applicant's allegation that the polygraphers made false statements in summarizing his interviews and that the senior AGA adjudicator somehow coordinated the submission of false reports. Our review of the polygraphers' reports and subsequent analysis by AGA personnel confirms that those documents are thorough, internally consistent, and contain nothing that would lead one to question the motives of those who prepared them. Applicant offered no plausible reason for why three AGA polygraphers conducting their assigned duties would have made up the specific admissions reflected in GE 2 or why the senior adjudicator would have directed such an effort. Federal agencies and employees, including polygraphers, are entitled to a presumption of good faith and regularity in the performance of their duties. *Sierra Club v. Costle*, 657 F.2d 298, 334 (D.C. Cir. 1981); ISCR Case No. 07-17801 at 6-7 (App. Bd. Dec. 5, 2012). Applicant has presented no evidence to rebut that presumption, and our review of the record reveals no such evidence.

Third, in several regards, the polygraphers' reports are corroborated by Applicant's testimony. At hearing, he confirmed the following facts that are reflected in the reports: in the May 2011 interview, he admitted viewing pornographic images of girls who appeared to be 12 or 13, albeit inadvertently, and admitted searching for "Asian Women" or Asian Movie Stars" while at work; in the September 2011 interview, he gave the polygraphers the name of various websites he visited, to include hardcorejunkie; and, in the October 2011 interview, he admitted that he had accidentally opened images of nude girls who appeared to be between 13 and 15 and admitted to withholding this information during his earlier interviews. Tr. at 44–55. Viewed as a whole and in light of the entire record, GE 2 supports a reasonable conclusion that the statements attributed to Applicant summarize what he actually disclosed.

The remainder of Applicant's appeal reiterates his denial of any admissions regarding child pornography and is effectively a challenge to the Judge's credibility assessment — that is, the Judge's decision to give more weight to the polygraphers' reports than to Applicant's denials and letters of support. Our review of this record gives us no reason to disturb the Judge's credibility determination. Directive ¶ E3.1.32.1 ("[T]he Appeal Board shall give deference to the credibility determinations of the Administrative Judge").

## Conclusion

Applicant has not established that the Judge committed harmful error. The record reflects that the Judge examined the relevant evidence, weighed the disqualifying and mitigating evidence, and articulated a satisfactory explanation for the decision. The record is sufficient to support that the Judge's findings and conclusions are sustainable. "The general standard 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).

## Order

The decision in ISCR Case No. 22-01200 is **AFFIRMED**.

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie
Allison Marie
Administrative Judge
Member, Appeal Board

Signed: Catherine M. Engstrom
Catherine M. Engstrom
Administrative Judge
Member, Appeal Board