



**DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: August 29, 2025

In the matter of:

Applicant for Security Clearance

ISCR Case No. 23-02609

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 November 26, 2024, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under 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 June 25, 2025, Defense Office of Hearings and Appeals Administrative Judge Mark Harvey denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline J, the SOR alleged two incidents of child abuse: 1) that Applicant was investigated in about March 2016 for assault and battery of a child and child neglect; and 2) that she was arrested in about August 2021 and charged with Cruelty toward Child – Abuse Child without Great Bodily Harm, that she pled guilty, and that her adjudication of guilt was withheld pending completion of two years of probation. Under Guideline E, the SOR alleged that Applicant falsified material facts on her July 2024 security clearance application in that she failed to disclose

her August 2021 arrest. In Applicant's SOR response, she denied all SOR allegations. The Judge found adversely on the Guideline J allegations and favorably on the Guideline E allegation. The favorable finding is not in issue on appeal and those facts and analysis will not be further addressed.

Findings of Fact

Applicant is in her early thirties. A high school graduate, she served in the U.S. military from 2013 to 2022 when she was received a general discharge under honorable conditions for misconduct. Applicant has a 10-year-old son (S), who lives with his father.

In early 2016, Applicant was suffering from postpartum depression. While at the pediatric clinic with S, who was then an infant, he started crying and Applicant slapped him, leaving a handprint and two scratch marks. Base police cited her for assault and battery on a child under the age of 16. Applicant did not face any disciplinary action from her command, but she went to family therapy for about nine months.

In about August 2021, a school nurse reported Applicant to Child Protective Services (CPS) because of bruises on S's thighs and hips that S attributed to his mother spanking him with the metal part of a belt. S was evaluated by the county's Child Protection Team (CPT). The county sheriff's report states:

[S] disclosed to CPT that his mother spanked him with a belt. [S] also disclosed that his mother put her hand on his neck and he could not breathe until she let go. [S] disclosed that sometimes his mother bangs his head on the wall. [S] disclosed that his mother locks him outside at night. [S] was observed to have multiple, deep contusions and areas of patterned ecchymosis with swelling and tenderness of his buttocks and thighs. Some of the contused areas appeared older, in different healing stages suggestive of at least two different incidents of trauma. CPT impression was "Extensive patterned bruises of bilateral thighs and buttocks consistent with egregious physical abuse of a six-year-old male child. [S] was subjected to significant, prolonged, blunt force trauma by a belt, possibly with holes or studs or similar object."

Decision at 4 (quoting Government Exhibit 7). During the investigation, Applicant told a Child Protection investigator and school officer that she spanked her son with a ruler, which could have resulted in the bruising on one thigh and that she had noticed the bruises on his buttocks but did not know where they came from and suspected it was from falling while bicycling.

At hearing, Applicant admitted that she was the source of some of the bruises on S's buttocks, which resulted from her spanking S, but she denied hitting him with a belt. She did not accept responsibility for the bruises of varied ages on S and argued that the report should not be accepted as true because the CPS representative was not qualified to provide a medical opinion. She also denied that she told a CPS representative that she hit S five or six strikes with a ruler.

Applicant was arrested and charged with cruelty toward child – abuse child without great bodily harm. She pleaded guilty, and her adjudication of guilt was withheld pending completion

of two (2) years of probation. During probation, Applicant attended anger management class once a week for 10 weeks, an anger and violence prevention program once a week for 26 weeks, and family and group therapy once a week for ten weeks. During Applicant's probation period, CPS viewed her as a threat to S and refused contact. In July of 2023, Applicant's successfully completed probation, and the charge was dismissed without conviction.

In character evidence, Applicant's mother described her as a loving mother who did not use excessive physical punishment to discipline her son and discussed Applicant's generosity, athletic success in high school, and dedication to the U.S. military and her son. Military supervisors praised Applicant's professionalism, honesty, and attention to detail and described her as an asset to her service.

Analysis

Citing to Applicant's admission to slapping S as an infant in 2016 and her plea of guilty to the child abuse charge in 2021, the Judge found that she committed both criminal offenses alleged in the SOR and that the evidence established security concerns under AG ¶ 31(b).¹ Turning to mitigation, the Judge highlighted Applicant's "important mitigating information," to include her participation in anger management classes, an anger and violence prevention program, and family and group therapy, as well as her successful completion of probation. Decision at 10. The Judge ultimately concluded, however, that Applicant failed to mitigate the concerns raised by her criminal conduct:

The evidence against mitigation is more persuasive. Applicant was not truthful at her hearing. She minimized the aggravated nature of her beating of S in 2021. She falsely denied that she struck S with a ruler or belt. She said she only used her hand to spank him. She falsely denied that she locked him outside where he was bitten by insects. "When 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." Applicant's failure to truthfully and candidly accept responsibility for her conduct at her hearing shows a lack of rehabilitation.

Id. (quoting ISCR Case No. 20-01699 at 5 (App. Bd. Oct. 12, 2022)).

Discussion

On appeal, Applicant raises issues of bias and double jeopardy. Regarding the first, Applicant alleges that the Judge's decision is biased, one-sided, and "shows no summary of any evidence submitted from . . . myself." Appeal Brief at 1. An appealing party has a heavy burden of demonstrating conduct by a judge that deprived the hearing or decision of fairness and impartiality. *See, e.g.*, ISCR Case No. 94-0282, 1995 WL 272062 at *3 (App. Bd. Feb. 21, 1995) (citations omitted). Here, Applicant fails to carry her burden. The Judge's decision explicitly considers all character evidence that Applicant submitted, noting that it was "important mitigating

¹ 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.

information.” Moreover, his decision cites repeatedly to Applicant’s testimony as she conveyed her explanation of the alleged events. Finally, we note that the Judge found favorably for Applicant on the Guideline E falsification allegation. In sum, we find nothing in the record to support Applicant’s contention that the Judge was biased or that would persuade a reasonable person that the Judge lacked impartiality.

Applicant also alleges bias on the part of Department Counsel, based on remarks made during closing arguments. Appeal Brief at 1. Although the Board has no supervisory authority over Department Counsel, the Board can review claims that the conduct of Department Counsel violated or prejudiced an applicant’s rights under Executive Order 10865 or the Directive. ISCR Case No. 02-04344 at 2 (App. Bd. Sep. 15, 2003). Upon review of Applicant’s brief and the transcript, we conclude that Applicant has established no *prima facie* case of any such violation.

We turn next to the gravamen of Applicant’s appeal—that “the hearing proceeding had me back on trial for a case closed” and that “DoD has no authority to put personnel back on trial for cases closed.” Appeal Brief at 1, 2. We note first that AG ¶ 31(b) expressly considers that a security concern may be established regardless of whether an applicant was formally charged, prosecuted, or convicted. The fact that criminal charges were not pursued for the 2016 incident and that Applicant has no conviction for the 2021 incident in no way forecloses DoD from considering the facts and circumstances surrounding that conduct in determining whether Applicant should be granted a security clearance.

Regarding the 2016 incident, it is well established that a judge can make findings of criminal conduct even if the applicant has not been formally charged with a criminal offense by the relevant criminal authorities. *E.g.*, ISCR Case No. 17-00506 at 4 (App. Bd. Aug. 7, 2018) (“Even if criminal charges are reduced, dropped, or result in an acquittal, the Judge may still consider the underlying conduct in evaluating an applicant’s security clearance eligibility.”). Here, Applicant admitted to the conduct alleged, which alone provides substantial evidence for the Judge’s findings.

Regarding the 2021 incident, the disposition of the criminal charge under state law is not material to the Judge’s decision in this case. For purposes of adjudicating Applicant’s security clearance case, it is irrelevant that Applicant was awarded deferred adjudication and ultimately was spared a conviction. The record evidence clearly supports the Judge’s finding that Applicant entered a guilty plea in state court to the charge of child abuse, which alone was sufficient for the Judge to conclude that Applicant engaged in the criminal conduct to which she pleaded guilty. To the extent that Applicant is challenging the factual sufficiency of the Judge’s findings, the record demonstrates that the Judge’s material findings of security concern are supported by substantial record evidence. Moreover, the Judge’s conclusion that Applicant’s failure to accept responsibility for her conduct demonstrates a lack of rehabilitation is well-rooted in the Appeal Board precedent to which he cites.

Conclusion

Applicant failed to establish any bias or that the Judge's conclusions were arbitrary, capricious, or contrary to law. 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. 23-02609 is **AFFIRMED**.

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