

content. Applicant admitted searching for content with post-pubescent underage girls but maintained that he never looked for content with prepubescent girls. He averred that if he came across content of extremely young girls having sex with adults, he would delete it; however, he also acknowledged that he would continue to search for such content, citing his addiction.

Applicant earned his bachelor's degree in computer and information systems in 2013 and his master's degree in computer science in 2023. He was first granted a security clearance in approximately 2011 and has been employed as a software engineer with various DoD contractors, beginning with Company A, for whom he worked as an intern during the summer of 2012 and upon his graduation in June 2013.

During the summer of 2013, when he was 21 years old, Applicant downloaded pornographic videos utilizing the search term "underage girls." One of the downloaded files was hosted by the police, who subsequently raided Applicant's home, confiscated his computer devices, and charged him in February 2014 with seven counts of misdemeanor possession of child pornography. On the advice of his attorney, Applicant did not immediately report the charges to his employer. In July 2015, he pled guilty to one of the counts and was given probation before judgment, with probation to include weekly participation in Sex Addicts Anonymous (SAA) and computer use monitoring by his probation officer. Applicant's probation was terminated early in December 2017, and his record was later expunged.

In October 2014, while his criminal case was still pending, Applicant reported the charges to Company A's security officer, which resulted in suspension of his security clearance, a triggered reinvestigation, and issuance of a January 2017 SOR alleging security concerns stemming from his 2014 charges.

In approximately October 2017, while both his probation and security clearance adjudication were ongoing, Applicant relapsed and began looking at pornography again. He stated the relapse occurred after maintaining "total sexual sobriety from anything of any kind" since his arrest in February 2014. Decision at 4 (citing Tr. at 28). As of the relapse, Applicant believed that he was seeing a therapist, could not recall if he was actively attending SAA, and averred that he was viewing only legal pornography.

In December 2017, Applicant's conduct was addressed at hearing before a different DOHA administrative judge who, in March 2018, found the security concerns mitigated and granted him national security eligibility. His clearance was reinstated in April 2018.

Applicant left Company A in June 2018 and began working for another DoD contractor, Company B. In August 2018, his work computer was flagged due to query terms indicative of pornography and Company B monitored his computer activity for ten days. Company B did not find child pornography on the work computer; however, they did find that Applicant queried and accessed pornography with similar themes, including a Russian website with child pornography content and an elevated malware risk. Applicant was placed on unpaid leave pending a full investigation and subsequently terminated in September 2018 for violation of company policy, including misuse of company assets and mischarging time.

A new SOR was issued in January 2024 alleging concerns about Applicant's sexual behavior, personal conduct, and use of information technology stemming from his involvement with pornography. Specifically, under Guidelines D and E, the SOR cross-alleged an overarching concern about Applicant's compulsive pornography addiction, which has persisted since adolescence and which he has been unable to stop despite serious related consequences (SOR ¶¶ 1.a, 2.a). To that end, Applicant's 2014 arrest was cross-alleged under Guidelines D and E (SOR ¶¶ 1.b, 2.a), and his 2018 termination was cross-alleged under Guidelines D, E, and M (SOR ¶¶ 1.c, 2.a, 3.a).

As of his February 2025 hearing, Applicant testified that he had not viewed inappropriate material on a work device since his 2018 termination and having been abstinent from pornography altogether since about September 2024. He also had other periods of abstinence from viewing pornography for periods of up to eight months but admitted relapsing each time. He could not recall whether he continued to use search terms that would elicit material depicting younger girls. Applicant further testified that he has established healthy boundaries with his personal devices; is supported by and accountable to his spouse, who is fully aware of his history and addiction; and is also supported by church leaders. He claimed weekly SAA attendance and that he has attended SAA most of the last ten years; however, he also acknowledged that his attendance has not been uninterrupted, that he has never completed the program's 12 steps, and that he most recently resumed attendance in mid-2024 but had not begun reworking the steps and did not have a sponsor as of the hearing. Finally, Applicant testified that he has seen several therapists to address his addiction since 2013, including from about 2018 to 2022. He submitted into evidence undated letters from one provider who had worked with Applicant for about a year as of the letters, was aware of Applicant's past legal and employment issues, and was working with him to address underlying anxiety and prevent relapse.

Discussion

The Judge opined that the record left questions and doubts about Applicant's national security eligibility, issued a mix of adverse and favorable formal findings across the Guidelines, and concluded overall that Applicant failed to mitigate the sexual behavior, personal conduct, or use of information technology security concerns. On appeal, Applicant challenges the Judge's adverse findings and the Government, through cross-appeal, challenges her favorable findings. For reasons stated below, we affirm the Judge's ultimate adverse decision.

Applicant's Appeal

The Judge found adversely regarding the 2014 criminal conduct as alleged under both Guideline D and Guideline E (SOR ¶¶ 1.b, 2.a) and the 2018 termination as alleged under both Guideline D and Guideline M (SOR ¶¶ 1.c, 3.a). On appeal, Applicant challenges these adverse findings, citing several errors that he argues carried through her disqualification and mitigation analyses under each Guideline.

Turning first to her disqualification analysis, the Judge assessed that Applicant "attempted to conceal his online activities on his work computer by unsuccessfully installing software to prevent his ability to view pornography." Decision at 9. Applicant charges that the software he attempted to install was meant to block his *access*, not his detection, and argues that the Judge's

finding “mischaracterizes both the software, and [his] intention in trying to install it.” Appeal Brief at 1. Although Applicant’s clarification – that the *software* he attempted to install was intended to block his ability to access pornography – is supported by the record, his argument is without merit. The cited language appears to be the Judge’s conflation of two related factual findings: Applicant “utilized incognito mode with his web browser to conceal his online activities;” and he “attempted to install software on his work computer to prevent his ability to view pornography, but it was denied because he was not an administrator.” *Id.* at 5. While Applicant’s intentions regarding the *software* were misstated, the Judge’s findings that he understood the prohibition on viewing pornography at work and attempted both to control and conceal his conduct (albeit via incognito mode) are supported by the record and the resulting analysis is sustainable.

The remainder of Applicant’s arguments are essentially disagreements with the Judge’s weighing of the evidence, which are not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See* ISCR Case No. 04-08975, 2006 WL 2725032 at *1 (App. Bd. Aug. 4, 2006) (citation omitted). For example, the Judge found that Applicant “continues to deny he violated his then-employer’s policy and/or rules related to mischarging time” when he viewed pornography at work, which she opined reflects that he “has not taken responsibility for his actions that led to his termination.” *Id.* at 9. On appeal, Applicant reiterates his position that, despite the investigation and termination for, in part, mischarging time, his former employer failed to consider the “possibility that [he] stayed later in the day to make up the time [he] spent looking at inappropriate material.” Appeal Brief at 1. Applicant contends that this is, in fact, what he did, and that he never charged the time spent viewing pornography at work as working hours. Here, the Judge weighed Applicant’s explanation against his former employer’s investigative findings and reasonably credited the latter.

Moreover, it is well established that “the presence of some mitigating evidence does not alone compel [a judge] to make a favorable security clearance decision.” ISCR Case No. 06-10320, 2007 WL 4379279 at *1 (App. Bd. Nov. 7, 2007). Even if Applicant’s explanation for charging work time was overwhelmingly supported by the record and thereby warranted application of AG ¶¶ 14(b)¹ and 41(a),² our assessment of the decision’s overall sustainability would not change. Considering the seriousness of Applicant’s historic pornography addiction and his failure to consistently address it through intervention and support, the Judge’s inability to find similar conduct – workplace and otherwise – unlikely to recur was reasonable and sustainable.

We conclude that Applicant has not established that the Judge committed harmful error. The Judge examined the relevant evidence and articulated satisfactory explanations for her adverse decisions under Guideline D, Guideline E, and Guideline M, and the ultimate adverse decision is sustainable on this record.

¹ 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.

² AG ¶ 41(a): so much time has elapsed since the behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.

Government's Cross-Appeal

The Judge favorably resolved the summary concern regarding Applicant's compulsive pornography addiction as alleged under both Guidelines D and E (SOR ¶¶ 1.a, 2.a) and the 2018 termination as alleged under Guideline E (SOR ¶ 2.a). Pursuant to Directive ¶ E3.1.28, the Government cross-appealed these favorable findings as arbitrary, capricious, and contrary to law. The Government's arguments are of mixed merit.

Guideline D – SOR ¶ 1.a

The Judge identified three potential Guideline D disqualifying conditions before concluding that none applied to SOR ¶ 1.a, opining that “Applicant's pornography addiction alone does not raise security concerns.” Decision at 9. Without explanation, she failed to include AG ¶ 13(b) as potentially disqualifying and thereby did not analyze its applicability to Applicant's pornography addiction. The Government contends that this was harmful error and that the Judge failed to consider significant record evidence establishing the condition's applicability. We agree.

Judges must apply pertinent Adjudicative Guidelines disqualifying and mitigating conditions. *See* ISCR Case No. 02-05110, 2004 WL 794269 at *3-4 (App. Bd. Mar. 22, 2004) (citing Directive ¶¶ 6.3, E3.1.25). Under AG ¶ 13(b), behavior may be disqualifying if it rises to “a pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop.” The Government persuasively argues that the Judge's summary dismissal of Applicant's “admitted addiction,” which has been demonstrated to “result[] in compulsive, illicit, rule-violating, law-violating and concerning behaviors,” was arbitrary and capricious. Cross-Appeal Brief at 9. In addition to the evidence discussed above, the Government buttresses its argument about AG ¶ 13(b)'s applicability by referring to the Judge's mitigation analysis, wherein she opines:

Applicant acknowledged that his pornography addiction, left untreated, has the potential to cross into illegal, or child pornography, content. He admittedly queried and accessed pornography that was similar in themes to child pornography when he used search terms that would elicit girls of a younger age on his work computer in 2018. Yet, he has never completed all the steps of the SAA program, despite having attended SAA over the last 10 years. Although he most recently resumed SAA participation in mid to late 2024, he had not yet begun reworking the SAA steps, and he did not have a sponsor as of the date of the hearing. In light of the above, doubts persist concerning Applicant's current reliability, trustworthiness, and judgment.

Decision at 10. Additionally, since his February 2014 arrest, Applicant has relapsed several times following attempts to abstain from pornography, including once in October 2017 during the pendency of both his probation and his earlier security clearance adjudication. Only four months elapsed between that favorable adjudication and security clearance reinstatement in April 2018 and his new employer flagging his computer due to suspicions about workplace pornography use in August 2018. The foregoing was more than sufficient to establish Applicant's inability to stop

his concerning sexual behavior. Considering the record in this case and the Judge’s own analysis about the continuing concerns raised by Applicant’s involvement with pornography, the Judge’s failure to evaluate Applicant’s pornography addiction under AG ¶ 13(b) was error and her conclusion that the concern does not pose an unmitigated security risk is unsustainable.

Guideline E – SOR ¶ 2.a

Turning to her Guideline E disqualification analysis, the Judge found AG ¶ 16(e)(1)³ relevant but only applicable to SOR ¶ 2.a as it pertained to Applicant’s 2014 incident. Noting that “Applicant’s current employer is aware of his pornography addiction and his 2018 employment termination for viewing inappropriate material on his work computer,” the Judge concluded that the disqualifying condition was not established for those cross-alleged portions of SOR ¶ 2.a.

The Government challenges the Judge’s analysis as too narrow, arguing instead that AG ¶ 16(e)(1) applied to the full scope of SOR ¶ 2.a’s cross-alleged conduct “because if known, [his pornography addiction and his 2018 behavior at work] could also affect his personal and community standing,” and further arguing that mitigation is unavailable because “it is unclear whether Applicant’s wife, family, or other friends in the community are aware of the extent of either of these behaviors,” rendering him still “vulnerable to coercion in an effort to shield these individuals from this derogatory and embarrassing information.” Cross-Appeal Brief at 12.

Contrary to the Government’s argument, the record reflects that Applicant’s conduct *is* known within his various circles, to wit: Applicant’s wife explained that he first shared with her information about his struggles with pornography, viewing child pornography, legal issues, and job termination when they were dating, and that he continues to be open with her and his close friends about his struggles (*see* Applicant Exhibit A at 2-4, 11); the hiring manager for Applicant’s current employment attested that, upon receiving an employment offer, Applicant disclosed the basis for his termination from Company B because he believed that “having someone in the company know about his struggle was an important factor in ensuring it would not repeat” (*id.* at 7); and a friend and former colleague evinced knowledge of Applicant’s addiction to pornography, to include how such involvement may lead to “strange, unethical, or illegal categories of pornography,” his termination from Company B, and his recent therapeutic efforts, and he further expressed that “the majority of [Applicant’s] friends and family, as well as his wife, employer, and supervisor, are aware and he is open with the subject as part of his recovery” (*id.* at 9).

Accordingly, the Judge’s conclusion that Applicant’s pornography addiction and 2018 termination do not raise independent security concerns under Guideline E was reasonable, and her favorable SOR ¶ 2.a findings are sustainable.

Conclusion

A judge’s decision can be found to be arbitrary or capricious if it “fails to examine relevant evidence, fails to articulate a rational connection between the facts found and the choice made,

³ 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: (1) engaging in activities which, if known, could affect the person’s personal, professional, or community standing.

fails to be based on a consideration of relevant factors, involves a clear error of judgment, fails to consider an important aspect of the case, or is so implausible as to indicate more than a mere difference of opinion.” ISCR Case No. 94-0215, 1995 WL 396942 at *3 (App. Bd. Apr. 13, 1995) (citing *Motor Vehicle Mfr. Ass’n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983)). Here, the Judge’s Guideline D analysis regarding Applicant’s pornography addiction fails to articulate a rational connection between the facts found and the choice made, fails to be based on consideration of relevant factors, and runs contrary to the weight of the record evidence. The favorable formal finding on SOR ¶ 1.a is not sustainable.

In summary, we reverse the Judge’s favorable finding for SOR ¶ 1.a and affirm all other findings, including the Judge’s adverse findings for SOR ¶¶ 1.b, 1.c, and 3.a, and her split findings for SOR ¶ 2.a. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Dep’t 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 adverse decision in ISCR Case No. 23-01357 is **AFFIRMED**.

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

Signed: Jennifer I. Goldstein
Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

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