



**DEPARTMENT OF WAR
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD**



Date: March 25, 2026

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

ISCR Case No. 22-00842

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Katie Quintana, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 14, 2022, 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), and Guideline J (Criminal Conduct) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On December 22, 2025, Defense Office of Hearings and Appeals Administrative Judge Eric Price denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline J, the SOR alleged that in 2019, while Applicant was serving in the U.S. Marine Corps, he was charged with violations of UCMJ, Article 120 (Rape of a Child, Aggravated Sexual Contact with a Child, Indecent Liberties with a Child, and Indecent Act), Article 120b (Rape of a Child, Sexual Assault of a Child, and Sexual Abuse of a Child), Article 120c (Indecent Recording and Indecent Viewing), and Article 134 (Obstructing Justice). In 2020, pursuant to a pretrial agreement, he pleaded guilty to violations of UCMJ, Article 134 (Child Endangerment) and Article 133 (Conduct Unbecoming an Officer), and the original charges were dismissed. In 2021, Applicant was discharged from the U.S. Marine Corps under Other Than Honorable

conditions and at a lower paygrade. The Guideline J security concern was cross-alleged under Guideline D and Guideline E. The Judge found adversely on all allegations.

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)). However, "[a]n analysis that merely is considered inadequate in the eyes of a party does not equate to an analysis that is arbitrary and capricious." ISCR Case No. 23-01559 at 2 (App. Bd. Sep. 16, 2024). "Unless a judge's weighing of the record evidence is patently absurd, clearly illogical, or obviously unreasonable, the appealing party must present a cogent reason or argument as to how or why the judge's weighing of the record evidence is arbitrary, capricious, or contrary to law." ISCR Case No. 03-05072 at 4 (App. Bd. Jul. 14, 2005).

While the Judge acknowledged the Government's evidence on the original charges was "sparse," he found it was "more than a scintilla" and concluded that the record as a whole established disqualifying conditions under all three alleged Guidelines. Decision at 16-17.¹ His finding was based upon Applicant's admissions, stipulation of fact, pretrial agreement, and guilty plea. The Judge correctly shifted the burden to Applicant to present mitigating evidence. *See* DISCR OSD Case No. 90-0766, 1992 WL 450050 at *2 (App. Bd. Mar. 12, 1992).

On appeal, Applicant challenges the adverse findings, citing errors in the Judge's mitigation analysis. Applicant submits that the allegations should have been mitigated by the passage of time and by the unusual circumstances surrounding the allegations through application of AG ¶¶ 32(a), 14(b), and 17(c).² Applicant also challenges the Judge's analysis of mitigating

¹ In a footnote, Applicant challenges application of Guideline E, asserting it "was not properly raised." Appeal Brief at 4, n.9. He argues that AG ¶¶ 16(c) and 16(d) apply only when there is: "(1) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline or (2) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination." *Id.* However, the Judge explicitly stated "AG ¶¶ 16(c) and 16(d) do not apply because the evidence is 'sufficient for an adverse determination' under Guidelines J and D." Decision at 17. Instead, the Judge correctly applied disqualifying condition 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, which includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing. We find no error in the Judge's Guideline E disqualifying analysis.

² AG ¶¶ 32(a): so much time has elapsed since the criminal 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; 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; 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

conditions AG ¶¶ 32(d) and 17(d),³ claiming that similar conduct is unlikely to recur, and that Applicant is rehabilitated. Finally, Applicant asserts that AG ¶¶ 17(e) and 14(c) apply because Applicant has reduced his vulnerability to coercion, exploitation, manipulation, or duress.⁴ We disagree.

The Judge's findings that Applicant's conduct was not mitigated by time under Guideline J, Guideline D, and Guideline E reflect a reasonable assessment of the record, given Applicant's questionable credibility and the lack of corroborating evidence. Additionally, the Judge's finding that Applicant failed to establish reform, rehabilitation, or that similar conduct is unlikely to recur is supported by the Judge's in-depth examination of Applicant's credibility. We note that the Judge addressed Applicant's vulnerability to coercion both in his analysis of the mitigating conditions and in his Whole-Person analysis. The Judge noted:

I did not find portions of Applicant's testimony credible. [Applicant] has not accepted full responsibility or demonstrated remorse for his misconduct. I also considered that he has not informed his employer about the sexual, indecency and obstruction of justice charges and that there is insufficient evidence to conclude his employer is aware of the SOR allegations including that he pled guilty to two offenses at a SPCM or that he was retired as a first lieutenant (O-2) with an OTH characterization of service. Therefore, the potential for pressure, coercion, exploitation, or duress persists.

Decision at 22.

In summary, Applicant's appeal advocates for an alternative weighing of the evidence under the applicable mitigating conditions but fails to demonstrate harmful error. 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). An applicant's "disagreement with the judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate that the judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law." ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Moreover, Applicant's arguments fail to rebut the presumption that the Judge considered all of the record evidence.

We have considered the entirety of the arguments contained in his appeal brief. The record supports a conclusion that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, including a rational connection between the facts found and the choice

³ AG ¶¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement; 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

⁴ AG ¶¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; 14(c): the behavior no longer serves as a basis for coercion, exploitation, or duress.

made. His conclusions and adverse decision are sustainable on this record. “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. 22-00842 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Jennifer Goldstein

Jennifer Goldstein
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board