

Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether he was denied due process, whether the Judge's findings were erroneous, and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

While riding an escalator at a shopping mall, Applicant placed his cell phone underneath the skirt of a girl who appeared to be about 13 to 15 years old. Upon being stopped by the police, Applicant admitted that he had videotaped a girl with his cell phone. He gave the phone and password to the police, who discovered that the most recent video on the phone was taken from underneath the skirt of a female. The police found four other such videos. Applicant told the police that he had a problem and had been recording videos such as the one in question for two to three weeks. He described the impulse as an "uncontrollable urge." Decision at 3. Applicant pled no contest to a charge of having secretly recorded another person's body underneath the clothing for the purpose of gratifying the offender's sexual desires.

At the hearing, Applicant denied having made the admissions described above. He recalled giving his cell phone to the policeman but did not know if anything incriminating was found on it. In his post-hearing submission, Applicant denied having committed the offenses. Subsequently, a court changed Applicant's plea to not guilty and dismissed the charge. Applicant has received therapy.

Applicant received a certificate of appreciation for his having detected someone who was a security threat. He is dedicated to his work and takes pride in doing a good job.

The Judge's Analysis

The incident described above was alleged under each of the three Guidelines referenced in the SOR. The Judge resolved the Guideline E allegation in Applicant's favor insofar as it was duplicative of the of the Guidelines J and D concerns. In resolving these latter two Guidelines against Applicant, the Judge stated that Applicant had successfully completed probation. However, he described the offense as serious and recent. He also noted the multiple nature of Applicant's misconduct, insofar as videos of several girls or women were found on his cell phone. He cited to Applicant's admissions to the police and stated that Applicant had not expressed remorse. He also stated that it is not clear whether Applicant was frank with his therapist.

Discussion

Applicant states that he was "blindsided" by Department Counsel's exhibits, which he had not seen prior to the hearing. He states that he was not aware in advance that "such exhibit" would

be offered into evidence and that he was not prepared for the hearing.¹ We have examined the transcript and note that, prior to the hearing, Applicant advised the Judge that he had not received discovery from Department Counsel. The Judge gave Applicant an opportunity to examine Department Counsel's exhibits and offered to continue the hearing for 30 days in order to give him an opportunity to prepare. He also gave Applicant 30 days after the hearing to submit additional evidence. Applicant did not request a 30-day continuance but did submit a post-hearing document, which was admitted without objection. Decision at 2; Tr. at 11. Moreover, he offered no objections to Department Counsel's exhibits when they were offered into evidence. Tr. at 20. We find no reason to believe that Applicant was denied an opportunity to prepare his case for mitigation or that he was otherwise denied the due process afforded by the Directive. *See, e.g.*, ISCR Case No. 15-04472 at 3 (App. Bd. Feb. 9, 2017).

Applicant states that the Judge's material findings were based on assertions by persons who never came before the hearing. We construe this as an argument that GE 3 is not worthy of belief. As stated in the footnote above, GE 3 is a police report. Although it contains hearsay, this exhibit is admissible both as an official record under Directive ¶ E3.1.20 and as a public record under Federal Rule of Evidence 803(8). *See, e.g.*, ISCR Case No. 06-06496 at 2-4 (App. Bd. Jun. 25, 2009). The contents of GE 3, when read in conjunction with all the other evidence in the record, support the Judge's findings regarding Applicant's security-significant conduct. The Judge's material findings are supported by substantial evidence or constitute reasonable inferences from the evidence. *See, e.g.*, ISCR Case No. 15-01285 at 3 (App. Bd. Dec. 22, 2016).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is 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). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

¹We take this to refer to Government Exhibit (GE) 3, a police report, which contained a description of the offense, Applicant's admissions, etc. Department Counsel questioned Applicant extensively about the contents of this exhibit. Tr. at 33-49.

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board