

KEYWORD: Guideline D; Guideline E; Guideline J

DIGEST: Applicant cites to favorable evidence, such as his military career and the decorations that he earned in service to the U.S. Applicant’s arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASENO: 12-11687.a1

DATE: 09/25/2017

DATE: September 25, 2017

In Re:)	
)	
-----)	ISCR Case No. 12-11687
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 6, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline D (Sexual Behavior), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On June 16, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gregg A. Cervi denied 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 the Judge's findings of fact contained errors and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has been employed by a Defense contractor since 2010. He served in the military from 1988 to 2010, retiring as an E-8. He served overseas on several occasions and deployed in support of U.S. combat operations. Among other decorations, Applicant received a Bronze Star.

In 2001, Applicant's spouse struck his daughter (D) with a coat hanger, leaving a welt on her face. He and his spouse attended parenting and anger management classes. In 2003, D reported to school with a bruise in the shape of a hand print on her buttocks. Applicant admitted that he had spanked D with excessive force and was again required to attend anger management.

In 2006, during an overseas assignment, D told family advocacy personnel, an adult neighbor, and a "child-friend" that Applicant had sexually molested her ten to twenty times when she was seven to eight years old. She also stated that Applicant touched her inappropriately when she went to her parents' bed after having had a nightmare. Applicant and his wife stated that D had disciplinary problems at school and often argued with her father, who was a strict disciplinarian. The record contains no evidence of any adverse action resulting from these allegations. In his interview, Applicant stated his belief that his daughter had lied about him to get attention. In his Answer to the SOR Applicant stated that he currently sees D and her child often, although she refuses to discuss these incidents with him.

On four occasions in 2011, Applicant visited a department store where he was reported to have left a dressing room wearing only underwear and asking employees how he looked. On an occasion at the end of the year, Applicant entered the store, and employees reported him to security. A store security manager waited outside a dressing area and observed Applicant leave wearing athletic underwear, a shirt, and socks. When approached, Applicant retreated to the dressing room and exited fully clothed. Applicant apologized to a store employee and was escorted out of the store. City police met Applicant and issued him a trespass notification banning him from the store for one year. There is no evidence that Applicant exposed his genitals during these incidents. There is no evidence of security-significant conduct since 2011.

The Judge's Analysis

The Judge stated that Applicant's conduct with D and in the department store reflect a lack of judgment and a pattern of inappropriate sexual behavior. Though noting the age of the allegations, the Judge stated that they were not infrequent and that Applicant had not taken responsibility for them insofar as he has denied that inappropriate sexual conduct occurred. In addressing Guideline E, the Judge stated that the credibility of the complainants and Applicant's inappropriate public conduct up to 2011 impugn his judgment. The Judge stated that Applicant committed abusive behavior toward his daughter despite having attended an anger management course. The Judge's analysis under Guideline J reiterated much of the above. The Judge noted that Applicant did not provide evidence from family members pointing to errors or inaccuracies in the

allegations, nor did he provide character references, evidence of innocence or rehabilitation, etc.

Discussion

Applicant challenges the Judge's findings. He notes that the 2001 incident involved a different daughter from the one Applicant was alleged to have molested. However, this did not likely affect the outcome of the case. He argues that the Judge did not address his contention that D had a motive to present false charges of molestation against him and that the Judge did not make sufficiently detailed findings about Applicant's current good relationship with D. He also contends that the Judge's findings do not capture the true nature of his conduct at the department store. Among other things, he states that the store employees possibly misinterpreted the incident and that the Judge's analysis does not properly account for "the complexity of human behavior." Appeal Brief at 7. After considering the totality of Applicant's arguments, we conclude that the Judge's material findings are supported by substantial evidence or constitute reasonable inferences from the evidence.¹ *See, e.g.*, ISCR Case No. 15-01285 at 3 (App. Bd. Dec. 22, 2016).

Applicant cites to favorable evidence, such as his military career and the decorations that he earned in service to the U.S. He also cites to his good duty performance in his current job and to his clean disciplinary record since 2011. Applicant notes that he was not charged with any offense as result of D's allegations against him, and he takes issue with record evidence that described his conduct in the department store as indecent exposure. On this last point, the Judge did not describe Applicant's misconduct in that way and made an explicit finding that he did not expose his private parts during the incidents. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 13-00502 at 3 (App. Bd. Mar. 7, 2017). Neither are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-08842 at 3 (App. Bd. Feb. 14, 2017). The Judge recognized the relative age of Applicant's offenses but cited to evidence that Applicant had apparently not taken responsibility for them, instead denying that he had done wrong and attributing the various allegations either to D's false complaints or to misinterpretations by store employees. The Judge, in effect, characterized Applicant's presentation in mitigation as self-serving, which was consistent with the record that was before him. *See, e.g.*, ISCR Case No. 10-04821 at 3, n.2 (App. Bd. May 21, 2012)("[A] reasonable person could find [a]pplicant's claims of factual innocence . . . to be self-serving and lacking in credibility.")

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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Order

¹Item 5 is a detailed report by the military criminal investigation service concerning Applicant's alleged molestation of D. This document contains a summary of investigative efforts and includes signed statements by witnesses. The Judge's findings about this allegation are consistent with the contents of this exhibit.

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board