

KEYWORD: Guideline J; Guideline D

DIGEST: Given the Judge’s sustainable finding regarding Applicant’s conviction for abuse of his step daughter, Applicant has not met his burden of persuasion that it is clearly consistent the interests of national security to grant him a security clearance. Adverse decision affirmed.

CASENO: 03-20320.a1

DATE: 12/12/2007

DATE: December 12, 2007

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In Re:)	
-----)	ISCR Case No. 03-20320
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Sheldon I. Cohen, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 26, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct) and Guideline D (Sexual Behavior) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended)

(Directive). Applicant requested a hearing. On July 30, 2007, after the hearing, Administrative Judge John Grattan Metz, Jr. denied Applicant's request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent and sustainable findings of fact: Applicant is an information manager employed by a defense contractor. He has previously held a security clearance while serving in the Marine Corps from 1978 to 2001.

On May 21, 2001, Applicant's adopted stepdaughter confided to her grandmother that Applicant had abused the stepdaughter from the time she was 13 until the age of 16. The grandmother passed this information on to Applicant's wife who then reported it to the Child Protective Services. Applicant retired from the Marine Corps on July 1, 2001, and was arrested by local authorities the next day. On November 19, 2002, he was indicted on charges arising from his abuse of his adopted daughter. Entering a plea of guilty, he was sentenced on February 15, 2002, to five years confinement, with all but six months suspended, and payment of costs. He served the confinement in a work-release status. He was required to participate in alcohol counseling, mental health counseling, sex offender counseling (including registering on the state police sex offender registry) and to serve three years of supervised probation upon his release from confinement.

A court-appointed clinical psychologist diagnosed Applicant as a pedophile. Though placing him in a low risk category for recidivism, she recommended he attend group sex offenders treatment, substance abuse treatment (alcohol) and family counseling. He complied with these recommendations.

Applicant called two psychologists to testify at the hearing. They gave similar testimony, to the effect that Applicant's offense was situational, in that it was affected by financial and work related stress, alcohol abuse, and lack of communication with his wife. Due to improved circumstances, both gave Applicant a favorable prognosis and stated that he was a low risk for reoffense. One expert testified, however, that between five and ten years after the offense the chance of reoffense rose from 7.6 % to 11.2 %. Applicant's wife and the victim testified favorably on his behalf, though both apparently were cognizant that the family has paid an economic price for his crime, since Applicant is the sole financial support. Applicant testified that he did not advise the Marine Corps of the case, nor did he advise his civilian employer until his guilty plea in November 2001. The Judge noted that Applicant was not totally consistent in his various statements as to the number of times he abused his daughter.

Once there has been a concern articulated regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). At that point, the burden shifts to the applicant to establish any appropriate mitigating conditions. *See* Directive ¶ E3.1.15.

We have examined the decision in light of the record as a whole. Given his sustainable findings, the Judge's conclusion that Applicant had not met his burden of persuasion that it is

“clearly consistent with the interests of national security” for him to have a clearance is sustainable. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). We conclude that the Judge’s decision is neither arbitrary, capricious, nor contrary to law.

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan

Michael Y. Ra’anan
Administrative Judge
Chairman, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board