

KEYWORD: Guideline E; Guideline K; Guideline M

DIGEST: We give deference to a Judge's credibility determination. Directive ¶ E3.1.32.1. The evidence, which includes his prior employer's written summary of the things that led to his firing, support the challenged finding. Indeed, the number of infractions suggest that they were not merely inadvertent or negligent. We have noted before that multiple false statements support a finding of intentional misbehavior. Adverse decision affirmed.

CASENO: 17-02612.a1

DATE: 04/25/2019

DATE: April 25, 2019

In Re: _____)
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) ISCR Case No. 17-02612
)
)
 Applicant for Security Clearance)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 1, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct), Guideline M (Use of Information Technology), and Guideline K (Handling Protected Information) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 11, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Richard A. Cefola denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: 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 and Analysis

Applicant was terminated from a previous employment. The reasons for this termination were that he installed unauthorized software on his work computer; created five “administrative accounts,” some in the names of co-workers, on a classified system without obtaining approval; and falsified his time card over a seven-day period, during which he spent the majority of his time on non-work related activities. Applicant claimed that he did not know that the software he installed was not authorized and that he had authority to create the administrative accounts. He did not corroborate these assertions. Applicant submitted five letters of support, but none of them shed light upon his misconduct.

The Judge stated that Applicant’s security-significant conduct was intentional, unauthorized, and occurred within two and a half years prior to the hearing. He noted Applicant’s falsified time cards and other misconduct, stating that he showed little or no remorse. Though noting evidence that Applicant is well-respected in his current job, he found that the record left him with questions and doubts about Applicant’s eligibility for access to classified information.

Discussion

Applicant contends that the Judge did not consider, or that he mis-weighed, favorable record evidence, such as his claim that he had approval for some of his conduct and that his conduct occurred over two years prior to the hearing. He argues that his infractions were relatively minor and that he had not been properly trained. Applicant takes exception to the Judge’s comments that he had acted intentionally and that he lacked remorse, thereby challenging the Judge’s adverse credibility determination. On this last point, we give deference to a Judge’s credibility determination. Directive ¶ E3.1.32.1. The evidence, which includes his prior employer’s written summary of the things that led to his firing, support the challenged finding. Indeed, the number of infractions suggest that they were not merely inadvertent or negligent. *See, e.g.*, ISCR Case No. 15-08163 at 5 (App. Bd. Oct. 25, 2017) (Multiple false statements support a finding of intentional misbehavior). Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-04198 at 2 (App. Bd. Jan. 15,

2019). We give due consideration to the Hearing Office case that Applicant has cited. However, Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. Each case must be adjudicated on its own merits. The cited case does not provide a reason to conclude that the Judge erred in his analysis or conclusions. *See, e.g.*, ISCR Case No. 17-03363 at 3 (App. Bd. Nov. 29, 2018).

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

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