

KEYWORD: Guideline E, Guideline J

DIGEST: Applicant does not challenge any of the Judge’s specific findings of fact. Instead, she contends the Judge did not consider her whole-person evidence and challenges some of his conclusions. Specifically, for example, she disputes his conclusions that he did not believe she was not trying to hide anything by failing to perform the audit and did not believe her personal use of the corporate credit card was sanctioned by the corporate president. In this regard, it should be noted that the Appeal Board gives deference to a Judge’s credibility determinations. Adverse decision is affirmed.

CASE NO: 19-00656.a1

DATE: 08/26/2020

DATE: August 26, 2020

In Re:	)	
	)	
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	)	
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 April 5, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under 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 hearing. On June 9, 2020, after the hearing, Administrative Judge Braden M. Murphy denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge summarized the case as follows:

Applicant, an accountant and business manager by training, was terminated for cause in 2014 for failing to complete a company financial audit as required. She was later found to have used a company credit card for personal purposes on numerous occasions, charging several thousand dollars, without authorization and without reimbursing her employer. That conduct later led to criminal charges, which were dismissed after Applicant participated in a pretrial intervention program and paid restitution. Applicant did not provide sufficient evidence to mitigate the resulting security concerns under Guideline E (personal conduct) and Guideline J (criminal conduct). Applicant’s eligibility for continued access to classified information is denied. [Decision at 1.]

In responding to the SOR, Applicant admitted each of the allegations with explanations. The Judge found over \$29,800 of personal charges were made on Applicant’s corporate credit card in 2013 and 2014. The Judge concluded that he did not find Applicant’s “justifications for her actions believable.” Decision at 4 and 11. In his analysis, the Judge stated:

Applicant asserted that personal use of corporate credit cards was sanctioned by [the corporate president]. This, too, rings hollow, as it was [the corporate president] who terminated Applicant and later provided the information to state investigators that led directly to the criminal charges. In addition, the company handbook detailed the restrictions on use of a corporate credit card, and [the corporate president] counseled Applicant early in her time at Company X not to use her corporate credit card for personal purposes. This evidence, too, cuts against Applicant’s assertions that her actions were sanctioned.

Applicant’s failure to perform the audit led to her termination in . . . 2014. Applicant asserted that she was not trying to hide anything about her conduct by failing to complete the audit, and was not worried that anything would be discovered. I do not really believe this, but there is no concrete evidence in the record to the contrary. Regardless, Applicant’s failure to perform an important aspect of her job, in the face of requests from her supervisor to do so, is another example of

Applicant's breach of a fiduciary duty to her employer and a disregard for rules and regulations. [Decision at 10.]

In her appeal brief, Applicant does not challenge any of the Judge's specific findings of fact. Instead, she contends the Judge did not consider her whole-person evidence and challenges some of his conclusions. Specifically, for example, she disputes his conclusions that he did not believe she was not trying to hide anything by failing to perform the audit and did not believe her personal use of the corporate credit card was sanctioned by the corporate president. In this regard, it should be noted that the Appeal Board gives deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. In general, Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence and are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor 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. 15-04856 at 2-3 (App. Bd. Mar. 9, 2017). Moreover, we conclude that the Judge took into account all aspects of the record evidence which bore upon Applicant's trustworthiness and reliability, which is what a whole-person analysis requires. *See, e.g.*, ISCR Case No. 14-05762 at 3 (App. Bd. Dec. 15, 2016).

Applicant has failed to establish the Judge committed any harmful error. 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 Ra'anan  
Michael 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