KEYWORD: Guideline B; Guideline E

DIGEST: Applicant has five siblings, who reside in the U.S. and are naturalized U.S. citizens. One of the siblings has been incarcerated in a U.S. prison since 2005. In SCAs completed in 2013, 2014, and 2015, Applicant failed to list this sibling in the section inquiring about his relatives. During subject interviews in 2011 and 2016, Applicant did not disclose the sibling in question. During his 2016 interview, the investigator asked him if he had a sibling in prison, and Applicant answered in the negative. Adverse decision is affirmed.

CASE NO: 18-02239.a1

DATE: 07/20/2020

DATE: July 20, 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 July 17, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision–security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 27, 2020, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 erred in finding that his factual omissions from his security clearance applications (SCAs) and his false answers during his clearance interviews were deliberate and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline B are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has five siblings, who reside in the U.S. and are naturalized U.S. citizens. One of the siblings has been incarcerated in a U.S. prison since 2005. In SCAs completed in 2013, 2014, and 2015, Applicant failed to list this sibling in the section inquiring about his relatives. During subject interviews in 2011 and 2016, Applicant did not disclose the sibling in question. During his 2016 interview, the investigator asked him if he had a sibling in prison, and Applicant answered in the negative. Applicant stated that he had been advised by his first employer not to list the imprisoned sibling, insofar as he had minimal contact with him. He claimed that he had relied on this advice when completing his SCAs. (Applicant's appeal brief includes contact information for the person he asserts advised him. The Board is not authorized to conduct investigations nor can we consider new evidence.)

During the hearing, Applicant testified that he takes his mother to visit his incarcerated sibling about twice a year and that he sees the sibling on these occasions. He also acknowledged that he sometimes speaks with this sibling on the phone when the sibling calls their mother. In his Answer to the SCA, Applicant stated that he was estranged from his sibling and that it would be unfair for this matter to have a negative impact on his life. He also stated that he falsely believed that if he had disclosed this sibling it might have made it more difficult to obtain a clearance. In an SCA completed in 2017, Applicant listed his incarcerated sibling. He states that he has received counseling regarding this matter.

The Judge's Analysis

The Judge noted Applicant's various explanations for his omissions: that he had been advised not to disclose his sibling because he had no contact with him; that, despite his purported lack of contact, he testified that he occasionally speaks with his sibling and visits the sibling in prison; and that he had been concerned that disclosure could harm his chances for a clearance. Moreover, she noted his 2016 interview in which he replied negatively to a question if he had a

sibling in prison, which she characterized as "a lie." Decision at 8. The Judge cited to the repeated nature of Applicant's misconduct, concluding that his evidence was not sufficient to mitigate the concerns raised in his SOR.

Discussion

Applicant challenges the Judge's findings about the deliberate nature of his omissions, arguing that he did not intend to deceive the Government about his sibling and citing to his claim that he had been previously advised to leave this person off his SCAs. He also argues as follows: "On my 2016 interview, I voluntarily disclosed my [sibling's] information to the background investigator[.]" Appeal Brief at 1. We examine a Judge's findings to see if they are supported by substantial evidence, that is, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See* ISCR Case No. 18-01564 at 3 (App. Bd. May 30, 2019). We note one error in the Judge's findings. Government Exhibit (GE) 3 is an application for a Public Trust Position completed in 2014 rather than an SCA, as the Judge found. This document did not request information about siblings, only parents, step parents, foster parents, children, and stepchildren. GE 3 at 15-16. Applicant did not err by failing to disclose information that was not sought. However, regarding the remaining allegations, the multiple nature of Applicant's omissions, along with his inconsistent explanations for them, support the Judge's finding of deliberate falsifications. The Judge's error regarding the 2014 application did not likely affect the overall outcome of the case. Therefore, it is harmless. *See, e.g.*, ISCR Case No. 18-02581 at 3 (App. Bd. Jan. 14, 2020).

Regarding the 2016 interview, the investigator informed Applicant of evidence that Applicant had a sibling in confinement. "[Applicant] stated that this is incorrect" and that [none] of his siblings "are or were in confinement." Enhanced Subject Interview Summary at 14, included in GE 5, Interrogatories. In responding to DOHA interrogatories, Applicant provided some corrections for the 2016 summary but none that made reference to his incarcerated sibling. He certified that the interview summary as corrected was accurate. GE 5, Interrogatories, at 3-4, 6. We find no reason to disturb the Judge's findings about the 2016 clearance interview.[1] Except for the one error noted above, the Judge's findings of fact are supported by substantial record evidence.

Applicant cites to his evidence in mitigation and to his character evidence, arguing that the Judge should have entered a favorable decision. Applicant's arguments consist of nothing more than a disagreement with the Judge's weighing of the evidence, which is not enough to show that the Judge's analysis was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02581 at 4. Applicant states that denial of his security clearance will harm his employment and his financial stability. The Directive does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 17-03024 at 3 (App. Bd. Jan. 9, 2020).

[1]Applicant may be arguing that his eventual disclosure his sibling's status in his 2017 SCA satisfies his burden of persuasion regarding mitigation. However, under the facts of this case, we find in this argument no reason to disturb the Judge's analysis of a series of knowingly false statements occurring over a period of several years.

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's adverse 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