

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 23, 2018, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline K (Handling Protected Information) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On January 28, 2020, after the hearing, Defense Office of Hearings and Appeals (DOHA) 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.

Applicant raised the following issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings regarding the Guideline K allegations and one Guideline E allegation were not raised as an issue on appeal. Consistent with the following, we affirm.

The Judge found against Applicant on one Guideline E allegation. This asserted Applicant deliberately attempted to control his breathing in order to slow his heart rate during a polygraph examination administered by a Federal agency in 2017. In responding to the SOR, Applicant admitted this allegation.

The Judge found:

In the sworn statement, Applicant said, “During the polygraph exam, I was trying to control my breathing to slow my heart down. I had held back information that I later told [the examiner], and included in this statement.” (GE 3 at 2) Applicant stated that he “felt I had to pass the poly exam, so [I] decided to try to control my heart rate, which just caused me to need to breathe deeper during other questions. I let information about polygraph exams I learned from movies and TV shows cloud my head. The purpose I was trying to control my breathing to pass the exam only.” [Sic] (GE 3 at 2) [Decision at 3-4.]

The polygraph report indicated, “No Opinion – Countermeasures.” *Id.* at 4. In his analysis, the Judge noted Applicant’s sworn statement contradicted his hearing testimony denying that his attempts to control his breathing were intended to influence the outcome of the polygraph. The Judge concluded that Applicant’s use of countermeasures to influence the polygraph not only evidenced poor judgment but also a failure to cooperate with in the security clearance process.

In his appeal brief, Applicant contends that he did not intentionally withhold information during the polygraph. We note that the above quotes from Applicant’s sworn statement (Government Exhibit 3) are accurate. From our review of the record, the Judge’s material findings about Applicant’s use of countermeasures to influence the results of a polygraph are based on substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 17-02225 at 2-3 (App. Bd. Jun. 25, 2019).

Applicant also contends that the Judge did not consider or properly weigh all relevant evidence. For example, he argues the Judge did not consider evidence that he honestly divulged his use of the breathing techniques during the polygraph, that he learned those techniques during athletic activities, that he was extremely nervous about taking the exam, and that he did not research methods about how to beat the polygraph. His arguments, however, are neither enough to rebut the presumption that the Judge considered all of the record evidence 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. 15-01717 at 4 (App. Bd. Jul. 3, 2017). We give due consideration to the Hearing Office case that Applicant has cited, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge’s decision. *Id.* We further conclude the Judge considered the totality of the evidence in compliance with the whole-person analysis requirements. *See* Directive, Encl. 2 App. A ¶ 2(a) and (d).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. Directive, Encl 2, App. A ¶ 15 provides that “failure, without reasonable cause, to . . . cooperate with security processing, including but not limited to . . . [a] polygraph examination, if authorized or required” “will normally result in an unfavorable national security eligibility determination [or] security clearance action[.]” “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, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information 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