

KEYWORD: Guideline E; Guideline J; Guideline M

DIGEST: As provided in Directive ¶ E3.1.32.1, the Appeal Board gives deference to a Judge’s credibility determination. From our review of the record, the Judge’s material findings and conclusions regarding the theft of the computer equipment are based on substantial evidence or constitute reasonable inferences that could be drawn from the evidence. Adverse decision is affirmed.

CASE NO: 17-01817.a1

DATE: 05/20/2020

DATE: May 20, 2020

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 17-01817
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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 trustworthiness designation. On November 14, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline E (Personal Conduct), Guideline J (Criminal Conduct), and Guideline M (Use of Information Technology) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. Although the SOR was styled originally as an ADP case, the Judge determined this was an ISCR case because Applicant was being sponsored for a security clearance.¹ On February 26, 2020, after the hearing, Administrative Judge Robert E. Coacher 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Applicant, who is in her 40s, previously held a security clearance that was revoked by another Federal agency in 2013. The SOR alleged that Applicant committed employee theft in about 1989; that she stole computer equipment from two different employers from 2000 to 2007; and that she illegally downloaded movies from 1993 to 2008, music from 2008 to 2011, and computer software. She denied the allegations that she stole computer equipment from the two employers and admitted the other allegations. During a 2012 security investigation, which involved an interview and polygraph examination, Applicant admitted engaging in the alleged conduct.

While the passage of time partially mitigated Applicant’s earliest misconduct, “what is most troubling about Applicant’s behavior is that she possesses an extensive IT [information technology] background, yet her inappropriate conduct fell directly into her area of expertise, i.e., theft of, or unauthorized use of computer hardware and software. Applicant failed to provide sufficient evidence to mitigate the personal conduct, criminal conduct, and use of information technology security concerns.” Decision at 8.

Discussion

In her appeal brief, Applicant essentially contends she did not steal computer equipment from the two employers. She claims that, when she arrived a her position, “employees were already permitted to take excess equipment that was not being used and music downloads were being done as well. . . . Excessed or DMRO [Defense Material Reutilization Office] equipment was permitted to be taken by the staff as well to the point that asking permission was not even required from management” Appeal Brief at 1-2. In the decision, the Judge addressed this claim by stating:

¹ At the beginning of the hearing, Applicant acknowledged that she was hoping to have her security clearance reinstated. Tr. at 9.

Also during the March 2012 interview, Applicant admitted that while working for two different employers (one was a successor contractor to the other) from 2000 to 2007 she took, without permission or authorization, numerous computer items, including multiple computer towers, monitors, keyboards, mouse sets, speakers, and memory sticks. She also took at least three laptop computers. She used these herself at home and gave several away to family members, her friends, and even her church. The value of the items was in excess of several thousands of dollars. She explained to the interviewer that she took the items because she could not afford to buy similar items at the time and the company was overstocked with these surplus items. She was told by a government employee that the items were to be strictly accounted for, but he also insinuated that he did not care if she took things. She knew what she was doing was wrong and she stopped. In her SOR answer and during her testimony, Applicant backed away from total acceptance of responsibility for her actions and claimed she had verbal authority from a supervisor to take the items. She also claimed that there was a culture of permissiveness when it comes to computer accountability at these companies during her time. Her SOR responses on this issue and her testimony were not credible. [Decision at 3.]

As provided in Directive ¶ E3.1.32.1, the Appeal Board gives deference to a Judge's credibility determination. From our review of the record, the Judge's material findings and conclusions regarding the theft of the computer equipment 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 she is a different person than the one depicted in the exhibits, that she has participated in community service, and that she demonstrated her reliability in jobs for the last seven years. Her arguments 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).

Applicant has failed to establish the Judge committed any harmful errors. 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