

KEYWORD: Guideline F; Guideline E

DIGEST: In this case, the SOR alleged only deliberate falsifications and was not amended at the hearing to address other forms of failure to provide truthful information. Applicant was not placed on notice that carelessness or recklessness in completing the SCA raised security concerns that could possibly result in denial of national security eligibility. As the Board has previously stated, the SOR should be easily amended so that a case is adjudicated on the merits of relevant issues. The SOR may be amended on remand. Decision is Remanded

CASE NO: 19-01014.a1

DATE: 10/05/2020

DATE: October 5, 2020

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In Re:)	
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-----)	ISCR Case No. 19-01014
)	
Applicant for Security Clearance)	
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Joseph D. Jordan, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 24, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 26, 2020, after the hearing, Administrative Judge Darlene D. Lokey Anderson denied Applicant’s request for a security clearance. The Judge made an amendment to a typographical error in her decision on March 31, 2020. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge erred in concluding Applicant falsified his security clearance application (SCA) and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline F were not raised as an issue on appeal. Consistent with the following, we remand.

Under Guideline E, the SOR alleged that Applicant falsified a security clearance application (SCA) in 2016 by responding in the negative to questions that asked whether he had been arrested or cited to appear in a criminal proceeding in the past seven years, whether he had ever been charged with a felony or an offense involving alcohol or drugs, and whether he illegally used any controlled substances in the past seven years. Applicant explained that he was not good with computers and asked his sister to assist him in completing the SCA. They worked on the SCA in the middle of the night after he returned home from work. He assumed his sister inputted the correct information, but now realizes he should have checked the responses before signing it. The Judge found against Applicant on the three falsification allegations.

In his appeal brief, Applicant asserts that he did not have any intent to falsify his SCA. In the decision, the Judge noted the potential application of one Guideline E disqualifying condition, that is, Adjudicative Guideline (AG) ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities[.]” The Judge did not specifically find or conclude that AG ¶ 16(a) applied in this case. Her Guideline E analysis consists of the following:

None of the mitigating conditions are applicable. Even though Applicant did not input the information himself on his security clearance application, he has the duty and responsibility to ensure that the information provided to the Government is accurate and truthful to the best of his ability. Applicant’s sister electronically inputted the information and Applicant should have checked and reviewed what she inputted to ensure its accuracy. Applicant was careless and did not take the process seriously. He signed the document and in doing so attested to its truthfulness. Applicant answered, “NO” to questions on his security clearance questionnaire concerning his police record, and illegal drug abuse, which he should clearly have admitted. There is no excuse for this dishonesty or carelessness and clearly calls his

character into question. In either case, considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and trustworthiness. To be entrusted with the privilege of holding a security clearance, one is expected to be honest and truthful at all times, and to know and understand the rules and regulations that apply to them, and to always abide by those rules. Under the particular facts of this case, Applicant has not demonstrated this awareness. By failing to answer these questions correctly on the security clearance application, his conduct does not show honesty, integrity, good judgment or reliability. At this time, Applicant does not meet the qualifications for access to classified information. Accordingly, the personal conduct security concern has not been mitigated. This guideline is found against Applicant. [Decision at 8-9.]

As a general principle, a Judge is tasked to resolve apparent conflicts in the evidence. *See, e.g.*, ISCR Case No. 14-00281 at 4 (App. Bd. Dec. 30, 2014). Moreover, a Judge's decision must be written in a manner that allows the parties and the Board to discern what findings the Judge is making and what conclusions he or she is reaching. *See, e.g.*, ISCR Case No. 16-02536 at 5 (App. Bd. Aug. 23, 2018).

The Judge essentially concluded that Applicant's SCA responses in question were either the results of dishonesty or negligence. Such a conclusion is not sufficient to establish deliberate falsification. AG ¶ 16(a) requires the Judge to conclude that there was a "**deliberate** omission, concealment, or falsification of relevant facts . . ." Directive, Encl. 2, App. A ¶ 16(a) (emphasis added). Carelessness does not equate to a deliberate falsification. In this case, the Judge failed to resolve an apparent conflict in the evidence, *i.e.*, whether Applicant's incorrect SCA responses were the result of a deliberate falsification or carelessness. It is unfair for a Judge to make formal findings that an applicant deliberately falsified responses in a SCA when his or her conduct may have only amounted to carelessness. As written, the Judge's decision is not sustainable.

We recognize the Directive provides that "**any** failure . . . to provide truthful and candid answers during national security investigative . . . processes" can raise questions about a person's eligibility for a clearance. Directive, Encl. 2, App. A ¶ 15 (emphasis added). While the Guideline E disqualifying conditions do not specifically list negligence in completing a SCA as conduct that could raise disqualifying security concerns, the language of AG ¶ 16(d), "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information[.]" sufficiently encompasses forms of negligent behavior. Whether negligence in completing a SCA creates a security concern depends on the facts of a case. For example, a simple misreading of a SCA question or a minor omission resulting from an oversight may not rise to the level to create security concerns. On the other hand, failure to exercise reasonable care in responding to questions during a clearance investigation may raise such concerns. Each case must be judged on its own facts. Directive ¶ Encl. 2, App. A ¶ 2(b).

In this case, the SOR alleged only deliberate falsifications and was not amended at the hearing to address other forms of failure to provide truthful information. Applicant was not placed on notice that carelessness or recklessness in completing the SCA raised security concerns that could possibly result in denial of national security eligibility. As the Board has previously stated, the SOR should be easily amended so that a case is adjudicated on the merits of relevant issues. *See, e.g.*, ISCR Case No. 17-02952 at 3-4 (App. Bd. Aug. 3, 2018). The SOR may be amended on remand. *Id.* at 4.

Accordingly, we remand this case for further proceedings in accordance with the Directive.

Order

The Decision is **REMANDED**.

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