

KEYWORD: Guideline E

DIGEST: Applicant contends that he did not deliberately fail to disclose information on his SCA, claiming he had no intent to hide information surrounding his military discharge. In this regard, we note that Applicant has not challenged any of the Judge’s specific findings of fact pertaining to the falsification allegations. It is well established that a falsification can be established through circumstantial evidence even in the face of an applicant’s claim that he did not deliberately fail to disclose material information on an SCA. Additionally, we are required to give deference to a Judge’s credibility determinations. Directive ¶ E3.1.32.1. Adverse Decision Affirmed.

CASE NO: 20-00685.a1

DATE: 08/27/2021

DATE: August 27, 2021

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In Re:)	
)	
-----)	ISCR Case No. 20-00685
)	
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 August 31, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 2, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) 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 issues on appeal: whether the Judge erred in concluding he falsified his security clearance application (SCA) and 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 his thirties, has been working in his current job for over six years. After graduating from a military service academy, he served on active duty for about five years until he received an under other than honorable (UOTH) discharge. Married, he has no children.

While on active duty about 10 years ago, Applicant was charged with theft of government property, making a fraudulent claim against the government, and conduct unbecoming an officer. These charges involve him wrongfully increasing the weight of his household goods in a permanent change of station (PCS) shipment so that he could submit a claim to be paid more money. After the charges were referred to a general court-martial, Applicant submitted a resignation in lieu of court-martial that was approved. Since then, he has filed petitions to upgrade his discharge. Three of those petitions have been denied, a fourth is pending. In completing a SCA in 2017, Applicant answered “No” to questions that asked whether he was ever charged with any felony offense, including under the Uniform Code of Military Justice, and whether in the last seven years he was fired from a job, quit after being told he would be fired, or left a job by mutual agreement following charges or allegations of misconduct. Applicant received his UOTH military discharge within seven years of completing the SCA.

In his resignation request, Applicant apologized for his conduct and said he “submitted a false claim for selfish monetary reasons and his actions were shameful and regrettable.” Decision at 4. He paid restitution to the government for the amount of the fraudulent claim. At the hearing, he now contends he did nothing wrong, claiming among other reasons that he was set up by the military criminal investigative agency, received an improper briefing about the PCS move, and evidence against him was falsified. He also contends that, after the court-martial charges were dismissed, he did not have to respond “Yes” to the SCA questions at issue and his attorney at the court-martial proceeding told him that as well.

Applicant’s testimony was not credible. He did not indicate whether he consulted with an attorney in filling out the SCA. It was apparent from his testimony that he has not accepted responsibility for his actions. Although the fraudulent claim was submitted about 10 years ago, this

offense was not minor and still casts doubt on his judgment. He also deliberately failed to disclose material information on his SCA.

Discussion

Applicant contends that he did not deliberately fail to disclose information on his SCA, claiming he had no intent to hide information surrounding his military discharge. In this regard, we note that Applicant has not challenged any of the Judge's specific findings of fact pertaining to the falsification allegations. It is well established that a falsification can be established through circumstantial evidence even in the face of an applicant's claim that he did not deliberately fail to disclose material information on an SCA. *See, e.g.*, ISCR Case No. 19-02345 at 3 (App. Bd. Feb. 8, 2021). Additionally, we are required to give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. From our review of the record, the Judge's material findings about the falsification allegation are based on substantial record evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 19-02345 at 3. Applicant failed to establish that the Judge erred in concluding that he falsified his SCA.

Applicant's remaining arguments amount to a disagreement with the Judge's weighing of the evidence. He contends, for example, the Judge did not properly apply the whole-person concept and did not consider his "distinguished service" in the military or "upstanding character[.]" Appeal Brief at 1. He also argues he has accepted responsibility for his actions and his former military service has engaged in its "share of wrongdoings[.]" including racist behavior. *Id.* 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. 17-02488 at 3 (App. Bd. Aug. 30, 2018).

Applicant has failed to establish that 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, 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: Jame F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board