



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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KEYWORD: Guideline K; E

DIGEST: Applicant also contends the Judge found that certain of his security violations were “inadvertent[,] but failed to find for him on those allegations.” To the extent that Applicant is arguing that negligent security violations may not be disqualifying, we find no merit in that argument. Directive, Encl. 2, App. A ¶ 33 provides, “Deliberate or negligent failure to comply with rules and regulations for handling of protected information—which includes classified and other sensitive government information, and proprietary information—raises doubt about an individual’s trustworthiness, judgement, reliability, or willingness and ability to safeguard such information, and is a serious security concern.” Adverse decision is affirmed.

CASENO: 20-02720.a1

DATE: 12/15/2021

Date: December 15, 2021

<p>In the matter of:</p> <p style="text-align: center;">-----</p> <p>Applicant for Security Clearance</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>ISCR Case No. 20-02720</p>
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 1, 2021, 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 September 13, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Richard A. Cefola 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 is in his late forties, has been working for defense contractors for about 17 years, and has held a security clearance for most of that employment. Under Guideline K, the SOR alleged three security violations, which were cross-alleged in a single Guideline E allegation. Applicant admitted the Guideline K allegations but denied the Guideline E allegation. Applicant admitted he sent classified information on three occasions to fellow employees on an unclassified network. These incidents occurred in 2008, 2013, and 2017. Regarding the first incident, he admits he “cut corners” in sending the email. Decision at 2. His actions during this incident were deliberate. For this incident, he received a written warning. The second incident involved him sending unclassified information in the email that when combined together constituted classified information. His actions during this incident were negligent, and he received a verbal reprimand. Applicant attributed the third incident to a systemic problem with his employer’s system for handling classified information. His action during this incident were inadvertent, and he received a verbal and written warning.

“Although Applicant’s most recent security clearance violation may have been inadvertent; there appears to also be a negligent pattern here. Such a pattern cannot be condoned when handling classified information.” Decision at 4. “It cannot be said that a similar security clearance violation is unlikely to occur.” Decision at 6. None of the Guideline K or E mitigating conditions apply. Applicant has failed to mitigate the alleged security concerns.

Discussion

Applicant contends “the Judge erred in some of his findings of fact.” Appeal Brief at 2. However, he does not identify any of the Judge’s specific findings of fact that are purportedly erroneous. This assignment of error fails for lack of specificity. *See, e.g.*, ISCR Case No. ISCR Case No. 17-03372 at 2-3 (App. Bd. Oct. 19, 2018) (explaining why assignments of error must be set forth with sufficient specificity to permit review on appeal).

Applicant also contends the Judge found that certain of his security violations were “inadvertent[,] but failed to find for him on those allegations.” Appeal Brief at 2. To the extent that Applicant is arguing that negligent security violations may not be disqualifying, we find no merit in that argument. Directive, Encl. 2, App. A ¶ 33 provides, “Deliberate or negligent failure to comply with rules and regulations for handling of protected information—which includes classified and other sensitive government information, and proprietary information—raises doubt about an individual’s trustworthiness, judgement, reliability, or willingness and ability to safeguard such information, and is a serious security concern.” *See also* ISCR Case No. 18-00496 at 6 (App. Bd. Nov. 8, 2019) (simple negligence in the handling of classified information can be a matter of grave security concern).

Applicant further argues the Judge erred in failing to comply with the provisions in Executive Order 10865 and the Directive by not considering all of the evidence, by not properly weighing the evidence, and by not correctly applying the mitigating conditions and whole-person concept. In his arguments, for example, he contends that his security violations were not recent or frequent, that they happened under unusual circumstances making them unlikely to recur, and that they resulted in no compromise of classified information. He also claims his security violations were the result of inadequate training or unclear procedures, and “[he] has had training after each incident and did not repeat the mistake again.” Appeal Brief at 7. Additionally, he appears to be arguing the three incidents do not show a pattern of negligence because they are distinguishable from each other. None of Applicant’s arguments, however, are enough to rebut the presumption that the Judge considered all of the record evidence or to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

Applicant has failed to establish 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 the record. “The general standard is that a clearance may be granted only when ‘clearly consistent with 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 national security.”

Order

The decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jennifer I. Goldstein

Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board