

KEYWORD: Guideline H; Guideline E

DIGEST: In her appeal brief, Applicant argues that she filled out her 2017 SCA to the best of her abilities, her omission in that document was a one-time mistake, and she “did not intentionally answer ‘No’” to the pertinent question. Appeal Brief at 3. We do not find her arguments persuasive. Adverse decision affirmed.

CASE NO: 19-03719.a1

DATE: 04/07/2021

DATE: April 7, 2021

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| ----- |) | ISCR Case No. 19-03719 |
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| 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 February 5, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement and Substance Misuse) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On January 13, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 finding Applicant falsified her 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 her 20s, has been working for her current employer since 2017. She was granted a security clearance in late 2017.

Under Guideline H, the SOR alleged that Applicant used marijuana with varying frequency from October 2011 to April 2018, that she used marijuana while granted access to classified information, and that she intends use marijuana in the future. Under Guideline E, the SOR alleged she falsified a SCA in November 2017 when she responded “No” to a question that asked whether she used illegal drugs in the past seven years. In responding to the SOR, Applicant admitted the allegations regarding her prior use of marijuana and denied the allegations regarding her intention to use of marijuana in the future and the SCA falsification. The Judge found against Applicant on all of the SOR allegations.

Applicant began smoking marijuana about twice a week in college to calm her anxiety. Such use was lawful in that state. She stopped using marijuana after moving to a state where its use was illegal. In a background interview, Applicant stated she used marijuana while holding a security clearance in 2017, but denied that allegation at the hearing, claiming she did not understand the question. Applicant stopped associating with people who use marijuana, obtained a psychological evaluation, and signed a statement of intent not to use marijuana in the future.

In 2017, Applicant completed a SCA in which she denied using illegal drugs in the past seven years. She knew she had used marijuana but answered “No” to that question because she did not read the question thoroughly. She also attributed that response to using marijuana in a state where it was legal and not understanding it was illegal under Federal law. In completing a SCA in 2019, she changed her answer to the question regarding illegal drug use. She also answered the SCA question that she intended to use marijuana in the future before talking to either the psychologist or the attorney.

Noting that Applicant’s last use of marijuana occurred in April 2018, the Judge concluded that the Guideline H security concerns were not mitigated. Regarding the falsification allegation,

the Judge concluded that the omission of her prior illegal drug usage in her first SCA was intentional. Applicant's explanations for that omission were not reasonable or credible and varied each time she responded. "I did not find her claims of confusion to be plausible, given the plain language of the question on the SCAs." Decision at 7.

Discussion

In her appeal brief, Applicant does not challenge any of the Judge's findings about her drug involvement. Instead, she argues that she filled out her 2017 SCA to the best of her abilities, her omission in that document was a one-time mistake, and she "did not intentionally answer 'No'" to the pertinent question. Appeal Brief at 3. We do not find her arguments persuasive. Her brief essentially repeats claims she made below that the Judge discounted. The Directive requires us to give deference to a Judge's credibility determination. Directive ¶ E3.1.32.1. We find no reason to disturb the Judge's unfavorable credibility determination in this case. From our review of the record, the Judge's material findings and conclusions regarding the SCA falsification are based on substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 19-02345 at 3 (App. Bd. Feb. 8, 2021).

The balance of Applicant's arguments amounts to a disagreement with the Judge's weighing of the evidence. For example, she argues that she did not have a good understanding of the defense industry when filling out the SCA, she was not briefed on what was needed to complete a SCA, and she received security training only after her security clearance was granted. None of Applicant's arguments are sufficient to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *Id.*

Applicant has failed to establish that 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. Directive, Encl. 2, App. A ¶ 2(i) provides:

It must be noted that the adjudicative process is predicated upon individuals providing relevant information pertaining to their background and character for use in investigating and adjudicating their national security eligibility. Any incident of intentional material falsification . . . is of significant concern. Such conduct raises questions about an individual's judgment, reliability, and trustworthiness and may be predictive of their willingness or ability to protect the national security.

"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