Date: August 22, 2022

In the matter of:	)	
	)	
-----	)	ISCR Case No. 21-00318
	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B Norman, Esq., Chief Department Counsel

FOR APPLICANT
Brittany D. Forrester, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 4, 2021, 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 10, 2022, 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 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

Applicant, who is in his mid-thirties, is married with three children. He has worked for his current employer, a Federal contractor, since August 2019. He served in the U.S. military from 2005 until 2017 and receives a disability pension due to service-connected post-traumatic stress disorder (PTSD).

In completing his security clearance application (SCA) in 2019, Applicant answered "no" to a question regarding whether he had ever had a clearance denied or revoked.[1] In fact, in 2008, the Government had revoked an existing clearance held by Applicant. Applicant admitted that he was aware that his clearance had been revoked but claimed that he had misread the question as being limited only to the previous ten years, surmising that he "must have skipped over" the word "ever." The Judge found Applicant's explanation to be lacking credibility, "given the plain language of the question and Applicant's experience and background." Decision at 3.

Earlier in 2019, Applicant had been employed by a state agency. He attended a training offsite, where he engaged in sexual relations with a female coworker. Upon discovery of Applicant's misconduct, his employer fired him. Applicant lied to his wife about the circumstances underlying his job termination and continued to do so until early 2021. He waited until then to tell her because he was afraid that he would lose his family. His current supervisors are not aware of this matter.

A year earlier, while working as an intern at a state agency, Applicant and other employees underwent a test of his job knowledge, during which he gave a fellow intern an answer to a test question. The state agency fired him. In 2015, while in the military, Applicant had an adulterous affair with a fellow service member. He attempted to cover up his misconduct by creating medical records that falsely reported that he was hospitalized during a timeframe that he actually spent with the fellow service member. Applicant's commander gave him non-judicial punishment under the Uniform Code of Military Justice. Applicant stated that he told his wife about the affair after starting couple's therapy. He also disclosed that he had received individual therapy from the Department of Veteran Affairs arising from his PTSD diagnosis.

Applicant received numerous awards and decorations while in the military. His current employer has acknowledged Applicant's contributions to the company's mission, and his 2021 work appraisal states that he "meets expectations." Decision at 4.

The Judge's Analysis

The Judge reiterated his finding that Applicant's explanation for his SCA omission was not credible. He also cited to evidence that Applicant had lied about his affair while in the military and that his current chain of command is not aware of his subsequent incident of sexual misconduct. He stated that Applicant had engaged in behavior that contravened the policies of two state agencies and the Federal Government; and that he had lied about his misconduct on numerous occasions. Though acknowledging that Applicant has received counseling, the Judge

[1] Section 25 of Applicant's SCA included the following: "Have you **EVER** had a security clearance eligibility/access authorization denied, suspended, or revoked?" Government Exhibit 1, SCA, at 45, emphasis in original.

stated that the record did not contain sufficient evidence of changed circumstances to permit a conclusion that Applicant's misconduct is not likely to recur. He stated that, while Applicant eventually disclosed to his wife his two incidents of adulterous misconduct and the true circumstances of his 2019 job termination, "his prolonged delay in each case placed him in a position of vulnerability." Decision at 8. In the whole-person analysis, the Judge noted Applicant's military service, combat deployments, awards and decorations, VA disability rating, and his family circumstances. However, he also noted evidence that Applicant had engaged in deceitful behavior on multiple occasions and had failed to follow established rules set forth by the military and by his employers. He also cited to Applicant's deliberate omission on his SCA.

Discussion

Applicant has not explicitly challenged the Judge's findings of fact. However, he cites to Hearing Office cases in which applicants' omissions or false statements were found to have been due to misunderstandings rather than a result of deliberate intent to deceive. We construe citation to these cases as challenging the Judge's finding that Applicant had deliberately provided a false answer on his SCA. We have considered the challenged finding in light of the entirety of the record evidence. The Judge's finding that Applicant's explanation for this omission lacked credibility is consistent with the evidence that was before him, and we give deference to Judges' credibility determinations. Directive ¶ E3.1.32.1. We conclude that the challenged finding is supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." *Id*.

Applicant contends that the Judge failed to consider significant record evidence, such as: his acknowledgment of past mistakes; his treatment for PTSD; his marital counseling; and Applicant Exhibit J, his wife's declaration of support in which she advises that she is aware of the circumstances underlying the SOR allegations and that Applicant enjoys the full support of his family and friends. On this last matter, although the Judge did not explicitly address the cited exhibit, he did find that Applicant had disclosed his infidelities to his wife. Regarding the other evidence cited in Applicant's brief, the Judge made findings about it and addressed it in his analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02872 at 3 (App. Bd. Jan. 15, 2020). An ability to argue for an alternative interpretation of the evidence is not enough to undermine a Judge's analysis. *See, e.g.*, ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020). We have given due consideration to the Hearing Office decisions referenced above, insofar as they bear upon the issues of mitigation and the Judge's whole-person analysis. However, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Appeal Board. *See, e.g.*, ISCR Case No. 18-02074 at 2 (App. Bd. Aug. 27, 2019). The cited cases are not sufficient to undermine the Judge's analysis of Applicant's security concerns.

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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Jennifer I. Goldstein
Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board