

Date: October 27, 2022

In the matter of:)
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-----) ISCR Case No. 21-01766
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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 August 10, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On August 30, 2022, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Arthur E. Marshall, Jr., denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge’s Findings and Analysis

Applicant has worked for his present employer since 2020. This is his first effort to obtain a security clearance. He is single and has no children. Applicant completed a security clearance application (SCA) in late 2020 in which he disclosed two charges of DUI and an arrest for possession of cocaine. The record shows, however, that Applicant was arrested for 32 other

offenses, including multiple felony counts, firearms violations, drug and alcohol related offenses, contempt of court, shoplifting, assault and battery, etc. His last known arrest occurred in 2013. Applicant provided no information or explanation regarding the allegations of criminal conduct or the Guideline E allegation that he deliberately omitted the bulk of his criminal offenses. The File of Relevant Information (FORM) “includes no documentation revealing favorable information about Applicant’s life; his method, if any, for curtailing criminal and civil misbehavior . . . ; or why his SCA disclosures were deficient.” Decision at 2. In the Analysis, the Judge cited to the nine years that had elapsed since Applicant’s last alleged incident of criminal conduct. Nevertheless, he concluded that Applicant’s failure to provide any information as to why he apparently stopped a 33-year pattern of misconduct precluded a finding that he is rehabilitated. Concerning the Guideline E allegation of deliberate failure to have disclosed the full extent of his criminal conduct, the Judge noted that Applicant had admitted all of the SOR allegations without explanation, that he presented no evidence of attempting to correct his omissions, or that he had taken steps to avoid such conduct in the future. Accordingly, the Judge concluded that Applicant had failed to meet his burden of persuasion regarding mitigation.

Discussion

Much of Applicant’s brief consists of matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. Applicant contends that the reason he omitted many of his offenses was that the charges were dismissed. *See, e.g.*, Item 4, FBI Record. This argument on its face does not undermine the Judge’s finding of deliberate omission. The SCA provides, at Section 18, that a criminal offense must be disclosed “regardless of whether . . . the charge was dismissed” (Item 3 at 24), and there is no record evidence to the effect that Applicant was unaware of that requirement. Moreover, as the Judge found, Applicant admitted all of the allegations, including the one for deliberate omission, without explanation. Item 2, Answer to SOR. Applicant argues that the Judge erred by finding that he has no children. While he disclosed no children in his SCA, a court record reflects he had child support liens entered against him, but this error in the findings was harmless. Item 3 at 18-20 and Item 5 at 42-43. The Judge’s material findings are based upon substantial evidence. *See, e.g.* ISCR Case No. 18-02581 at 3 (App. Bd. Jan. 14, 2020). Applicant has not raised any issue of harmful error that is cognizable by the Appeal Board.

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 F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

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

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