DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
POST OFFICE BOX 3656
ARLINGTON, VIRGINIA 22203
(703) 696-4759

Date: August 15, 2023

In the matter of:

WHS-C Case No. 23-00307-R

Applicant for Security Clearance

APPEAL BOARD DECISION

APPEARANCES

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

FOR APPLICANT
Pro se

On July 11, 2022, the Department of Defense (DoD) issued a statement of reasons (SOR) pursuant to DoD Manual 5200.02 (Apr. 3, 2017, as amended) (DoDM 5200.02) advising Applicant that his conduct raised security concerns under Guideline D (Sexual Behavior) and Guideline J (Criminal Conduct) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective Jun. 8, 2017) (SEAD 4). On September 9, 2022, Applicant answered the SOR.

On October 26, 2022, DoD Consolidated Adjudication Services (CAS) revoked Applicant's security clearance eligibility, and he appealed that revocation under the provisions of DoDM 5200.02. On December 2, 2022, Under Secretary of Defense (Intelligence & Security) Ronald Moultrie issued a memorandum requiring that DoD civilian or military personnel whose clearance eligibility was revoked or denied between September 30, 2022, and the date of that memorandum be provided the opportunity to pursue the hearing and appeal process set forth in DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). In accordance with Secretary Moultrie's memo, Applicant was given that option, and he elected the adjudication process in the Directive. By electing that option, Applicant's prior security clearance revocation was effectively

nullified, and he was provided a hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge who would make the security clearance eligibility determination.

On February 23, 2023, the Government amended the SOR by adding allegations under Guideline E (Personal Conduct). Applicant responded to those allegations on March 9, 2023. At a hearing session held on April 5, 2023, the Government moved to add two new Guideline E allegations, and that motion was granted. On April 26, 2023, the hearing reconvened to provide Applicant the opportunity to submit evidence regarding those new SOR allegations.

On May 31, 2023, after close of the record, DOHA Administrative Judge Robert E. Coacher denied Applicant's security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. Consistent with the following, we affirm the Judge's decision.

The Decision: The Judge's pertinent findings of fact and conclusions are summarized or quoted below.

Applicant, who is in his fifties, is a civilian employee of a defense agency. For many years, he has worked as a security manager or personnel security specialist for Federal entities. He served in the miliary for about ten years and received an honorable discharge in 1999. He has a 100% disability rating from the Department of Veterans Affairs due to injures incurred while serving in Afghanistan. He holds multiple degrees, including a master's degree. He has held a security clearance since 1992.

Applicant is twice divorced. The Guideline D and J allegations involve stepdaughters from each marriage. One stepdaughter (SD1) is from his first marriage (1993-2012) and the other (SD2) is from his second marriage (2014-2017).

During an interview with a criminal investigator in 2017, SD2 detailed alleged sexual misconduct committed by Applicant, including that he touched her genitalia to examine her for body piercings, that over a four-year period he spanked her on the buttocks with a belt and his hands while she was naked, and that he digitally penetrated her vagina under the guise of checking to see if she was a virgin. Following SD2's allegations, Applicant was issued protective orders, reassigned, and barred from an overseas military base.

> During the hearing testimony, Applicant admitted that he checked SD2 for body piercings, but denied that he touched her vagina while doing so. He claimed that he was concerned about her health. He states that she was topless and in her panties during this viewing. He had her lay down and he claimed: "I grabbed the top of her panties and I just looked at it and that was it." He admitted telling his boss, Mr. C, that he viewed her genital area. [Decision at 4.]

In March 2018, SD1 also accused Applicant of sexual abuse, which allegedly occurred between 2003 and 2008. Applicant was subsequently indicted for conduct stemming from these allegations and arrested. Applicant was released from custody on bond and is required to wear an ankle monitor. His trial on the criminal charges is scheduled for later this year.

The original SOR was in a narrative format. At hearing, the Judge requested that Department Counsel state the specific allegations in the original SOR so that he could make precise findings of fact, which she did both on the record and in writing. *See* Hearing Exhibit V. Thereafter, the Judge noted:

> Under Guideline D, [the SOR] alleged that in or around November 2016 and April 2017, while stationed at an overseas military location (ML-1), Applicant engaged in criminal sexual behavior when he sexually abused and/or made sexually abusive contacts with his stepdaughter (SD2) (SOR 1.a). Under Guideline J, it is alleged that Applicant was arrested and indicted on October 14, 2021, in U.S. District Court on two counts of engaging or attempting to engage in sexual contact with SD1 and SD2 (SOR 2.a); the original indictment was voided by a superseding indictment filed on June 9, 2022. The superseding indictment charged Applicant with four counts of sexual contacts or sexual acts against SD2 at ML-1 and against SD1 (when she was between the ages of 12 and 16, while residing at an overseas military location (ML-2) (SOR 2.b). [Decision at 3.]

The Judge found against Applicant on the Guideline D and J allegations. In his Guideline D analysis, the Judge stated:

> Applicant denied the allegations. His denials are not credible in light of his admissions of looking at his 18-year-old stepdaughter's vaginal area to see if she had a piercing, his admission that he queried her on her virginity, and his admission that he used corporal punishment on SD2 by spanking her with her pants and underwear pulled down. I did not find his explanation about why he engaged in these actions with SD2 rather than her mother, W2, credible. [Decision at 10.]

The SOR, as twice amended, also alleges nine security clearance application (SCA) falsifications under Guideline E. These asserted that Applicant deliberately failed to disclose unfavorable employment information in response to questions on SCAs submitted in 2011, 2013, and 2019. Applicant denied these allegations. The Judge found against Applicant on all but one of the Guideline E allegations, noting, "[w]ith this background [as a personnel security specialist], he was fully aware of his responsibilities to provide truthful, non-misleading information when answering questions about his previous work experiences." Decision at 12.

Appeal Issues

There is no presumption of error below. *See, e.g.*, ISCR Case No.19-01689 at 3 (App. Bd. Jun. 8, 2020). The appealing party has the burden of raising and establishing that the Judge committed harmful factual or legal error. *Id.* In his appeal brief, Applicant raises due process issues and challenges some of the Judge's conclusions.

Election of Security Clearance Adjudication under the Directive

On appeal, Applicant first raises related due process issues regarding his adjudication election under Secretary Moultrie's memo. He contends that the DOHA hearing and appeal

process under the Directive "was not thoroughly explained" to him and also asserts that he was "given no opportunity to utilize [his] agency's security management office (SMO) for guidance" under the Directive's process. Appeal Brief at 1-2. He further states that he regrets electing the DOHA hearing and appeal process. *Id*. at 1. We find no merit in these assertions.

Applicant is raising these issues for the first time on appeal.[1] His contentions are refuted by the record and the Government's Reply Brief, which include the following:

a. The Reply Brief contains documents showing that Applicant was provided adequate information about the adjudication processes.[2] These include (1) a DOHA document dated February 10, 2023, explaining the difference between the DoDM 5200.02 appeal process and the Directive hearing and appeal process, and (2) the disclosure letter sent to Applicant on February 23, 2023, providing information about the Directive hearing process and copies of the exhibits the Government intended to offer into evidence at the hearing.

b. In his adjudication process election, Applicant stated:

> Of the options that were provided to me on February 10, 2023, I would like to select the process under the 5220.6 process. Your memorandum states that this process provided an opportunity for a hearing prior to denial or revocation of a clearance. Prior to the hearing you would be provided with a copy of any evidence that an attorney representing the Government planned to present to the Administrative Judge at the hearing. The hearing is conducted in the same manner under either process [*i.e.*, compared to a personal appearance under DoDM 5200.02], however under the 5220.6 process the Administrative Judge would issue a decision which is final unless appealed to DOHA's independent three-judge Appeal Board by the losing party, be that the Government or you.
>
> I would like the process under DoD 5220.6. [Hearing Exhibit IV.]

This election reflects that Applicant had a good understanding of the hearing and appeal process under the Directive and of the major difference between the two DoD hearing processes.

c. Prior to the hearing, Applicant was sent a Notice of Hearing that scheduled the proceeding. The notice contained two documents issued by the DOHA Chief Judge, *i.e.*, (1) a memorandum, dated January 10, 2023, explaining the options provided in Secretary Moultrie's memo, and (2) the Prehearing Guidance for DOHA Industrial Security Clearance (ISCR) Hearings

[1] Although there is a sufficient basis to conclude that Applicant forfeited or waived some issues by failing raise them in a timely manner in the proceeding below, we will address those issues. *See, e.g.*, ISCR Case No. 01-23356 at 7, n. 11 (App. Bd. Nov. 24, 2003) (issues may be waived even though the Directive does not address waivers) and DISCR OSD Case No. 88-1198 at 5 (App. Bd. Nov. 13, 1992) (waiver of objection to a motion to amend the SOR by failing to raise it at the hearing).

[2] The Appeal Board is generally prohibited from considering new evidence. Directive ¶ E3.1.29. The Board, however, can consider new evidence when examining threshold issues, such as jurisdiction and due process. *See, e.g.*, ISCR Case No. 14-00812 at 2 (App. Bd. Jul. 8, 2015). In this case, we can consider the documents attached to the Government's Reply Brief because they pertain to due process issues that Applicant raises on appeal.

and Trustworthiness (ADP) Hearings, dated January 15, 2019. This latter three-page document detailed the basic hearing procedures and directed applicants or their representatives to consult the Directive for further guidance. In the Government's disclosure letter, Applicant was provided a copy of the Directive. Furthermore, because Applicant has worked as a personnel security specialist for many years, including at DOHA for a period (Decision at 2), it would not have been unreasonable for the Judge to conclude that Applicant was familiar with the Directive and the adjudicative guidelines.

d. At the beginning of the hearing, the Judge asked Applicant whether he understood "that under the Directive [he had] the right to be represented by an attorney or personal representative at [his] own expense[.]" Tr. at 7. Applicant responded in the affirmative. *Id*. Regarding Applicant's assertion that he was not given the opportunity to consult with his agency's security office, we note that no provision in the Directive restricts him from seeking assistance from his security office in preparing for the hearing. Nor has he cited anything that either Department Counsel or the Judge may have said that would have caused him to believe he was prohibited from consulting with his security office before the hearing.

e. At the beginning of the hearing, the Judge also explained the basic hearing procedures and process. Tr. at 6-30. The Judge further stated:

> During these proceedings, unless you indicate otherwise, I will assume you understand what's happening and don't have any questions or concerns. If you do have any questions at any time, just let me know and we'll address them at that time. [Tr. at 8.]

At the hearing, Applicant did not raise any questions or concerns of that nature. While the Judge did stop Applicant at times, such as during his opening statement to tell him that certain matters being raised were not relevant or that he was repeating himself (*see, e.g.*, Tr. at 40, 42), none of those stoppages would have led a reasonable person to conclude that Applicant's understanding of pertinent matters was so deficient that he was not capable of representing himself in this administrative proceeding.

Based on our review, we conclude that Applicant was provided timely and adequate information about the DOHA hearing and appeal process and that he knowingly elected to have his case adjudicated under that process. His assertion that the process was not thoroughly explained to him fails to establish that he was denied any due process rights afforded him under the Directive. Furthermore, the fact that Applicant is dissatisfied with the Judge's decision and now regrets his election of a clearance adjudication under the Directive is not a legitimate basis for vacating that election or for granting him any relief on appeal.

SOR Amendments

Applicant asserts that the Government amended the SOR without consulting with his agency or the CAS. He further states:

> [T]he Administrative Judge granted the motion to amend the SOR and only permitted me 21 days to respond to the amended SOR that my agency and the CAS was not made aware of. I did not have an opportunity to properly respond to the new allegations raised by the government's attorneys. The [original] SOR details were laid out to me on July 11, 2022, and I was given 60 days to respond at that time to the SOR, the [second] amended SOR provided me 21. Two separate sets of amendments were granted by AJ Coacher and I was not given an adequate amount of time to submit a detailed and proper response therefore I responded poorly due to the time constraints placed upon me by the Administrative Judge . . . between hearings. [Appeal Brief at 2-3.]

To the extent that Applicant is contending that an error occurred by amending the SOR without consulting the CAS or his agency, this argument lacks merit. Applicant cites no authority supporting this contention. Directive ¶ E3.1.17 addresses a motion to amend the SOR at the hearing and provides:

> The SOR may be amended at the hearing by the Administrative Judge on his or her own motion, or upon motion by Department Counsel or the applicant, so as to render it in conformity with the evidence admitted or for other good cause. When such amendments are made, the Administrative Judge may grant either party's request for such additional time as the Administrative Judge may deem appropriate for further preparation or other good cause.

There is no Directive provision that addresses amending the SOR prior to the hearing. Whether SORs are amended before or during the hearings, there is no requirement for the Government or the Judge to consult with the CAS or an applicant's employer before or after such an amendment. Such a consultation with an employer in an industrial case would likely result in a Privacy Act violation. We also note that Section 10 (Appeal Process) of DoDM 5200.02 does not address SOR amendments in personal appearances. In short, no procedural error occurred by not consulting with Applicant's agency or the CAS about the SOR amendments.

Seventy-one days passed between the issuance of the first SOR amendment and the commencement of the hearing and 21 days transpired between the second SOR amendment and the reconvening of the hearing. At the first session of the hearing, the Judge granted the Government's motion permitting the second SOR amendment and, *sua sponte*, indicated that he intended to give Applicant 15 days to further prepare regarding that amendment (Tr. at 156), which also happens to be the minimum period an applicant is entitled between receiving the notice of hearing and the commencement of a hearing. *See* Directive ¶ E3.1.8. Applicant responded that he would take the 15 days and did not indicate that he needed more time to prepare. Tr. at 156-159. However, shortly thereafter, the Judge decided to reconvene the hearing 21 days later, which also happens to be one day more than the period an applicant is entitled in responding to an original SOR following its receipt. *See* Directive ¶ E3.1.4. Applicant asserted no objection to reconvening the hearing on that proposed date. When the hearing reconvened, Applicant did not assert that he was unprepared or that he needed additional time to prepare. At the second hearing session, Applicant testified and offered additional exhibits. His appeal brief does not assert that, if he had been giving additional time, he would have proceeded in any different manner.

Applicant failed to establish that he requested additional time to prepare either prior to or at the hearing. Directive ¶ E3.1.17 does not specify the length of time that an applicant must be given to prepare after the SOR is amended. In the absence of a specified period, the Judge's determination regarding how much time an applicant should be given to prepare is reviewed under the abuse of discretion standard. In this case, we find no reason to conclude the Judge abused his discretion in providing Applicant 21 days following the second amendment. In short, Applicant failed to establish that he did not receive fair notice of, and a reasonable opportunity to respond to, the SOR amendments.

Pending Criminal Charges

Applicant's brief states:

> With regards to the SOR issued on July 11, 2022; my criminal defense attorney provided me with specific responses to the SOR. Under my attorney's advice, I was to respond to each allegation in written form before the request for a hearing. Essentially, "NO COMMENT" was the response to the allegations until after the trial which is scheduled to be held [later this year]. During the DOHA hearings, AJ Coacher did not object to the government attorneys questioning me again regarding the July 11, 2022, SOR. The government attorneys continued to ask the questions that were laid out on the written SOR in the hopes of getting a different answer after they were fully aware of the fact my initial responses were: "I contest these allegations, and I have pled "not guilty" to them, and legally I am innocent of these allegations, however, given the ongoing nature of the litigation, I have been advised by counsel not to specifically detail all the reasons the alleged victim's statements are untrustworthy and factually inaccurate." [Appeal Brief at 3, quoting SOR Response.]

Applicant further stated that he was placed in an awkward position about what he could and could not say about the SOR allegations. To the extent that he is contending that his right to remain silent was infringed, we do not find that argument persuasive. Regarding this issue, we first note that Applicant's comments about the advice he received from the attorney representing him in the criminal proceeding constitutes new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29.

Applicants may exercise their right against self-incrimination under the Fifth Amendment of the U.S. Constitution when responding to SOR allegations or questions that call for answers that might expose them to potential criminal prosecution. *See, e.g.*, DISCR OSD Case No. 90-0721 at 5 (App. Bd. Jan. 16, 1992) (noting Fifth Amendment right against self-incrimination can be invoked in industrial security clearance cases).[3] As an initial matter, Applicant did not ever

[3] Directive ¶ 6.1 also provides:

> An applicant is required to give, and to authorize others to give, full, frank, and truthful answers to relevant and material questions needed by the DOHA to reach a clearance decision and to otherwise comply with the procedures authorized by this Directive. The applicant may elect on constitutional or other grounds not to comply; but refusal or failure to furnish or authorize the providing of relevant

explicitly exercise his right against self-incrimination. At no time before or during the hearing did he object to a question or refuse to respond because the response could potentially incriminate him. His statement in the SOR Response that he was told by his "counsel not to specifically detail all the reasons the alleged victim's statements are untrustworthy and factually inaccurate" was not raised as a Fifth Amendment privilege issue at the hearing. Since Applicant was representing himself in this proceeding, it was *his* responsibility, *not* the Judge or Department Counsel, to protect and invoke his rights. *See, e.g.*, ISCR Case No. 17-02196 at 2-3 (App. Bd. Apr. 27, 2018) (although *pro se* applicants cannot be expected to act like lawyers, they are expected to take timely, reasonable steps to protect their rights) and ADP Case No. 18-00329 at 3 (App. Bd. Dec. 14, 2018) (Judges and Department Counsel have no authority to provide advice to applicants concerning what rights they should exercise). Applicant has not established that his right against self-incrimination was infringed during the processing of his case.

Additionally, Applicant contends that, even though the criminal charges against him are still pending, Department Counsel and the Judge "have already deemed the case against me as valid, and guilt is assumed in the ruling on this matter." Appeal Brief at 3. This argument lacks merit. DOHA proceedings and criminal trials are very different. Of note, DOHA proceedings apply a much lower standard of proof (substantial evidence) than criminal trials (beyond a reasonable doubt). *See* Directive ¶ E3.1.32.1, setting forth the substantial evidence standard. In DOHA proceedings, a Judge can make findings that an applicant engaged in criminal conduct even if the applicant has not been charged with or convicted of that criminal conduct or even if the applicant has been acquitted of that criminal conduct. A disqualifying condition that applies in this case highlights this point. Under Disqualifying Condition 13(a), a security concern could arise from "sexual behavior of a criminal nature, whether or not the individual has been prosecuted." AG ¶ 13(a) (emphasis added). In this case, the Judge's determination that Applicant committed the alleged offenses is merely an administrative conclusion that substantial evidence exists in the record to establish Applicant engaged in security-significant conduct. Applicant failed to establish that the Judge acted beyond the authority provided him in the Directive when he concluded Applicant engaged in the alleged sexual/criminal conduct. *See, e.g.*, ISCR Case No. 18-02018 at 4 (App. Bd. Nov. 4, 2021).

Applicant further requests that his security clearance revocation be suspended until after the criminal proceedings and that he be given an appropriate amount of time to respond to the amended SOR. Appeal Brief at 4. Applicant is essentially requesting that the proceeding be delayed so that he can develop additional evidence. The Board has no authority to grant that request. *See, e.g.*, ISCR Case No. 14-00151 at 3 (App. Bd. Sep. 12, 2014) (an applicant is not entitled to a delayed or deferred adjudication and the Board has no authority to grant an applicant an extension for the purpose obtaining more evidence). Furthermore, Applicant has not established that he merits the granting of any exception under Appendix C of SEAD 4.

---

and material information or otherwise cooperate at, any stage in the investigation or adjudicative process may prevent the DOHA from making a clearance decision.

Impact of Merit Systems Protection Board (MSPB) Settlement Agreement on Falsification Allegations

Seven of the nine falsification allegations concern Applicant's responses to questions in 2011 and 2013 SCAs. These responses involve a position that Applicant held at a Federal agency from 2009 to 2011. More specifically, the questions asked the reason why Applicant left that position; whether he had been fired, quit, or left a position by mutual agreement following charges or misconduct in the last seven years; and whether he had been officially reprimanded, suspended, or disciplined for workplace misconduct in the last seven years. Applicant indicated that he left the position at issue for "[c]areer progression to a position at a federal government agency in law enforcement" and answered "No" to the other questions. *See* Government Exhibit (GE) 2 at 15; GE 3 at 23. The Judge concluded that Applicant "deliberately provided false and misleading information" in his response to those questions. Decision at 11.

Applicant basically challenges the Judge's adverse findings on those seven falsification allegations because they contravene a MSPB settlement agreement. He contends, "I did not knowingly lie or falsify any government documentation ever in my career and under the agreement of the MSPB settlement between [the former agency] and myself, the agency was to remove anything that alleged misconduct." Appeal Brief at 3.

In the decision, the Judge addressed the MSPB settlement agreement by finding:

> Applicant was issued a removal letter for misconduct by his agency on January 6, 2011. Applicant contested this action before [MSPB]. On May 9, 2011, Applicant and the agency entered into a settlement agreement accepted by the MSPB. As part of the agreement, the agency rescinded the actions removing Applicant from employment for cause and Applicant agreed to resign from his position, effective in August 2011. Other than requiring the agency to remove the removal documentation from Applicant's official personnel records, the agreement had no effect on his two prior disciplinary suspensions. Applicant also agreed never to apply to the agency for future employment. [Decision at 7.]

In his analysis, the Judge concluded, "The MSPB settlement agreement between the agency and Applicant had no bearing on his responsibility to provide accurate information on his SCAs." Decision at 12.[4]

[4] The Government argues that the Appeal Board previously addressed this issue and affirmed an adverse falsification finding that involved an applicant who had a settlement agreement expunging the record of an employment termination. Reply Brief at 23 (citing ISCR Case No. 11-07487 at 6-7 (App. Bd. Aug. 17, 2018)). The facts in that case, however, are distinguishable from the present case; particularly, other evidence existed to support a finding that the applicant intended to conceal information about his employment. The Government also argues that the MSPB settlement agreement "is akin to a conviction being expunged, but the reporting requirements on the SF-86 still require it to be identified." Reply Brief at 23, n. 101. We do not find that argument persuasive. Unlike the questions regarding employment disciplinary actions and removals, the SCA questions regarding an applicant's police record are specifically prefaced with an instruction to report information regardless of whether the record has been sealed, expunged, or otherwise stricken from the court record, or the charge was dismissed. *See, e.g.*, GE 1 at 51. Conversely, the SCAs in this case have no similar instruction with respect to employment history and do not require the reporting of adverse employment actions even if they have been subsequently rescinded by settlement agreement.

Pertinent provisions of the MSPB settlement agreement state:

(1) "The Agency agrees to rescind the Decision to Remove for misconduct dated 6 January 2011 with an effective dated of 7 January 2011, and cancel the applicable SF-50 documenting his removal. Neither the issued decision nor cancelled SF 50 will remain in [Applicant's] Official Personnel File (OPF). **Any other documents in [Applicant's] OPF will be removed reflecting the subject misconduct**." Applicant Exhibit A1 at ¶ 2 (emphasis added).

(2) "[Applicant] will sign an SF-52, Request for Personnel Action, documenting his resignation effective ninety (90) calendar days after the signing of this agreement." *Id*. at ¶ 5.

(3) "The Agency agrees to accept [Applicant's] resignation effective on 7 August 2011 and issue an SF-50 documenting **Resignation – for personal reasons**. The SF-50 documenting Resignation – for personal reasons will be filed in [Applicant's] Official Personnel Folder." *Id*. at ¶ 9 (emphasis added).

Based on our reading of the MSPB settlement agreement, the Judge erred in concluding that the MSPB settlement agreement had no bearing on Applicant's SCA responses. Additionally, since the rescinded Decision to Remove for Misconduct—which would have likely reflected the misconduct at issue—is not in the record, it is unknown whether the 2-day and 14-day disciplinary suspensions fell within the scope of the settlement agreement and were removed from Applicant's OPF.

In adjudicating falsification allegations, an applicant's state of mind is often the principal issue. *See, e.g.*, ISCR Case No. 19-03939 at 3 (App. Bd. Feb. 21, 2023). *See also* ISCR Case No. 02-11286 at 4 (App. Bd. Jun. 29, 2004) (an SCA omission, standing alone, is not proof of a deliberate falsification); ISCR Case No. 05-03472 at 6 (App. Bd. Mar. 12, 2007) (the Judge must make findings about Applicant's culpable state of mind that are reasonably supported by the record evidence for an adverse falsification finding to be sustainable). The provisions in the MSPB settlement agreement that provided for the deletion of the removal action and disciplinary actions from Applicant's OPF and that characterized his departure from the agency as a "resignation for personal reasons" were significant matters that merited examination. Applicant's understanding of the agreement was a key factor to consider in determining whether he deliberately falsified the SCA responses. From our review, we conclude that the Judge erred in failing to analyze the impact the above-quoted agreement provisions may have had on Applicant's state of mind when he responded to those questions. This error, however, was harmless. *See, e.g.*, ISCR Case No. 19-01220 at 3 (App. Bd. Jun. 1, 2020) (an error is harmless if it did not affect the outcome of the case). Based on our review, the Judge's adverse finding on one of the two remaining falsification allegations is sustainable. Moreover, considering the record in its entirety, the sustainable adverse findings under Guidelines D, J, and E sufficiently support the unfavorable clearance decision.

Applicant also requests that "a thorough inquiry be conducted to confirm or deny that derogatory information was reported in JPAS and to the CAF during this period . . . [and] that the agency . . . complied with the terms of the MSPB Settlement Agreement." Appeal Brief at 3. He further requests that his official records reflect accurately the date of his clearance revocation. The Appeal Board's authority is limited to reviewing a case for compliance with Executive Order

10865 and the Directive. *See, e.g.*, ISCR Case No. 08-05344 at 3 (App. Bd. Feb. 3, 2010). We do not have authority to perform the functions that Applicant requests.

Conclusion

Applicant failed to establish the Judge committed 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 the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also*, AG ¶ 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
Chair, Appeal Board

Signed: Gregg A. Cervi
Gregg A. Cervi
Administrative Judge
Member, Appeal Board

Signed: Allision Marie
Allision Marie
Administrative Judge
Member, Appeal Board