



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: April 8, 2024

<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. 21-01882</p>
---	--	-------------------------------

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 15, 2023, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline K (Handling Protected Information), Guideline B (Foreign Influence), Guideline I (Psychological Conditions), and Guideline E (Personal Conduct) of the National Security Adjudicative Guidelines (AG) of Security Executive Agent Directive 4 (effective June 8, 2017) (SEAD 4) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On February 6, 2024, Defense Office of Hearings and Appeals Administrative Judge Mark Harvey denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge found favorably for Applicant on the allegations under Guidelines B, I, and K. Under Guideline E, the SOR cross-alleged the Guideline K conduct and alleged 14 instances in which Applicant failed to disclose information or provided false information to his military unit, in his security clearance application (SCA), or in background investigation interviews. The Judge

found favorably for Applicant on the cross-allegation and on one of the falsifications but found adversely to Applicant on the remaining 13 falsifications.

On appeal, Applicant contends that the Judge failed to give appropriate weight to evidence that Applicant presented and that the Judge erred in his credibility assessment, rendering his decision arbitrary, capricious, and contrary to law. Consistent with the following, we affirm.

Applicant is in his early fifties. He served in the U.S. Navy for twenty years and retired in 2013. The Guideline E falsifications relate to three events that took place in his final years on active duty: his relationship and subsequent marriage to a foreign national; his storage of sensitive government information on a personal computer; and his hospitalizations for mental health issues. In 2010, Applicant met Ms. G while he was in Peru, of which she was a citizen and resident. He traveled to Peru to visit Ms. G on several occasions and married her in March 2012. Although they later became estranged at a date uncertain, Applicant and Ms. G never divorced. Regarding this relationship, Applicant is alleged to have committed ten falsifications, to include: failing to disclose his relationship with a foreign national and related travel to his military unit; lying to his unit by denying that he traveled to get married; lying to a Naval Criminal Investigative Service (NCIS) agent by falsely alleging that he was being extorted by Ms. G; falsifying his 2018 SCA by not disclosing his 2012 marriage, his financial support for a foreign national, and his foreign travel; and lying to a background investigator in 2018 about his relationship with Ms. G, his 2012 marriage, and related foreign travel.

Turning to the second event – in 2012, Applicant was questioned by NCIS about having improperly stored sensitive aircraft information on his personal computer. In his interview with the NCIS agent, Applicant confirmed that the stored information was—at a minimum—sensitive and that he had left his personal laptop in the custody of a foreign national. The SOR alleges that Applicant falsified facts during an interview with his security clearance background investigator in which he denied having ever been suspected or accused of the improper handling of sensitive or classified information. At hearing, Applicant stated that he was sent to a summary court martial for this matter but was acquitted.

Turning to the third event – in November 2012, Applicant was involuntarily hospitalized for mental health treatment for about two weeks. He also received mental health treatment in January 2013. The SOR alleges that Applicant falsified his 2018 SCA by failing to disclose the treatment and falsified his background interview by denying the involuntary hospitalization.

The Judge concluded that Applicant deliberately failed to disclose or provided false info about the issues detailed above, as alleged in the SOR. Decision at 17. Additionally, the Judge found that Applicant lied at his hearing about whether he had sensitive military information on his personal laptop and about whether he informed his command about his trips to Peru, but the Judge noted that he would consider this non-alleged conduct only for the limited purposes permitted under Appeal Board precedent (e.g., assessing credibility, considering whether an applicant has demonstrated successful rehabilitation). *Id.* at 18, citing ISCR Case No. 03-20327

at 4 (App. Bd. Oct. 26, 2006). In his whole-person analysis, the Judge concluded:

[Applicant] repeatedly lied, and his credibility is poor. His lies to security officials, including his lies at his hearing, and to his command when he was in the Navy are serious. They cast doubt on his current reliability, trustworthiness, and judgment. I do not have confidence that he would follow orders or comply with rules unless he personally agrees with them. . . Applicant is not an honest, candid, and forthright person. His multiple misstatements raise a serious concern that he would not voluntarily and honestly report a breach of security if reporting that breach of security would risk his own personal reputation, employment, or continued access to classified information. [Decision at 19.]

Discussion

On appeal, Applicant challenges the Judge’s credibility determination—specifically the “statement that I was dishonest during the hearing.” Applicant argues that he “find[s] no information supporting this claim in any of Judge Harvey’s records provided in the final finding.” Appeal Brief (AB) at 1. Based on our review of the record and decision, we find no reason to disturb the Judge’s adverse credibility assessment.

The Directive requires the Appeal Board to give deference to a judge’s credibility determinations. Directive ¶ E3.1.32.1. Upon his review of the evidence in this case—to include Applicant’s testimony at the hearing—the Judge made several conclusions that reflect on Applicant’s credibility. First, he concluded that—as alleged in the SOR—Applicant had deliberately provided false information or omitted information to his military unit or security officials in thirteen separate instances. Additionally, the Judge found that Applicant lied at his hearing “when he falsely claimed he did not have sensitive Navy information on the computer” and that he “also lied at his hearing when he said he informed his command about his trips to Peru.” Decision at 18. Those credibility determinations are well within the Judge’s authority and well supported by the evidence of record. The Judge had the opportunity to observe Applicant’s demeanor during his hearing testimony, assess the credibility of Applicant’s testimony on these matters, and weigh Applicant’s explanations and denials of wrongdoing in light of the record evidence. On appeal, a party challenging the resulting credibility determination has a heavy burden of persuasion, and Applicant’s disagreement with the Judge’s negative assessment of his credibility is not sufficient to meet his heavy burden. *See, e.g.*, ISCR Case No. 03-05072 at 5 (App. Bd. Jul. 14, 2005).

Applicant also argues that the Judge did not consider or give appropriate weight to some of his mitigation evidence, in particular the fact that he was acquitted of all charges at his 2013 summary court-martial, that he “retired honorably at the end of April that year with 20 years of service,” and that he has “worked tirelessly and without any incident” at his current job for over five and a half years. AB at 1–2. The Judge’s decision, however, reflects that he thoroughly reviewed all evidence presented, and we note that he finds favorably on several allegations based on evidence presented by Applicant. None of Applicant’s arguments 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. Moreover, the Judge complied with the requirements of the Directive in his whole-person analysis by considering all evidence of record in reaching his decision.

Applicant has failed to establish that the Judge committed any harmful error or that he should be granted any relief on appeal. 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*, 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: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: James B. Norman

James B. Norman
Administrative Judge
Member, Appeal Board

Signed: Gregg A. Cervi

Gregg A. Cervi
Administrative Judge
Member, Appeal Board