

Date: April 24, 2023

In the matter of:)
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Applicant for Security Clearance)
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WHS-C Case No. 22-02444-R

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

On May 26, 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 E (Personal Conduct) of the National Security Adjudicative Guidelines. On June 10, 2022, Applicant acknowledged receipt of the SOR and subsequently submitted a reply.

On October 11, 2022, DoD Consolidated Adjudication Services (CAS) revoked Applicant’s eligibility for access to classified information, 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Ronald Moultrie issued a memorandum requiring that DoD civilian or military personnel whose clearance eligibility was revoked or denied between September 30, 2022, and the date of that memorandum be provided the opportunity to pursue the hearing and appeal process set forth in DoD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). As a result of Secretary Moultrie’s memo, Applicant was given the opportunity to receive the process set forth in the Directive, and he elected that process. Hearing Exhibit 1.D. On February 23, 2023, after the hearing, Defense Office of Hearings and Appeals Administrative Judge Mark Harvey denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged concerns arising from a September 2021 investigation conducted by the Defense Counterintelligence and Security Agency (DCSA) Office of the Inspector General (OIG), which revealed that, while employed as a DCSA background investigator, Applicant submitted false or inaccurate entries in a Report of Investigation (ROI), reported conducting personal source interviews that did not occur, and inaccurately reported other pertinent investigative information. As a result of these findings, Applicant's access to classified information was suspended.

The Judge found against Applicant and, for the reasons stated below, we affirm.

Judge's Findings and Analysis

Applicant is in his mid-30s. He earned his bachelor's degree Summa Cum Laude in 2013 with a major in criminal justice and concentration in forensic investigations. Thereafter, Applicant worked for two years as a police officer with another government agency, where he received three promotions before becoming a DCSA background investigator.

In August 2021, in response to a routine re-contact letter, one of four sources that Applicant claimed to have interviewed as part of a background investigation reported that she had never spoken with Applicant. The DCSA OIG initiated an investigation and contacted the source, who reiterated that Applicant never interviewed her, and provided discrepant information from what Applicant had reported of the interview in the ROI. DCSA OIG subsequently contacted the three other sources identified in the ROI to validate their testimonies. All three confirmed with certainty that they were never interviewed by Applicant and, once again, all three provided discrepant information from what Applicant reported of their respective interviews in the ROI.

Telephone records for Applicant's government cell phone did not reflect calls to the four sources. He explained that his government phone had poor service at his residence and so he received authorization to use his personal phone to conduct interviews; however, Applicant decided to use prepaid telephones for the interview calls instead of his personal phone, which made it impossible for him to prove that he called the four sources. Applicant also averred that his notes from the calls, which contained details such as the dates and names of individuals contacted, were unavailable, having been destroyed after the ROI was completed. Applicant maintained that the subject ROI accurately reflected what sources told him, and that he complied with investigative policies on the identification of witnesses he interviewed. He suggested that someone may have impersonated the four sources, may have simply agreed with Applicant's comments to appease him, or may have lied to Applicant, the OIG, or both.

The Judge found that Applicant is "an intelligent, well trained, and knowledgeable investigator" who "understands the investigative standards for reporting interviews in reports." Decision at 8. He concluded that Applicant "knowingly and intentionally fabricated the interviews of [the four sources] in an ROI" and that such fabrication "reflects untrustworthy and unreliable behavior, constitutes a pattern of dishonesty, and . . . adversely affects his 'personal, professional, and community standing.'" Decision at 8. The Judge also found that Applicant's continued denial of fabricating the four interview summaries was not credible, showed a lack of rehabilitation, and weighed against mitigation of the personal conduct security concerns. Decision at 9-10. As a result of the foregoing, Applicant could not "be trusted to disclose potentially derogatory security-related

information about himself that might jeopardize security,” and he “did not establish his reliability, trustworthiness, and ability to protect classified information.” Decision at 11.

Discussion

On appeal, Applicant argues that the Judge’s “language in the decision . . . incorrectly impl[ies] wrongdoing on [his] part,” and that “this incorrect implication of wrongdoing resulted in unfair prejudice when rendering a decision in this case.” Appeal Brief at 1. Specifically, Applicant first takes issue with the Judge’s finding that he “did not make detailed notes of the contents of the calls” and asserts that, to the contrary, he “maintained notes of the interviews that contained all required information and they were as detailed as required by DCSA policy.” Appeal Brief at 1.

Applicant testified at hearing that, per his training, he logged the date and name of the individual contacted; he did not log the time he called or how long the call lasted. Tr. at 31-32. The extent of his description of the substance of his calls was that he:

would ask two pages worth of notes, but what would be reported would just be so and so had contact with so and so . . . so many days of the week as teacher, neighbor, whatever. And then, if there’s no issue[,] information included that would affect that person’s clearance, then nothing else gets reported.

Tr. at 38. The Judge’s finding that Applicant “did not make detailed notes of the content of the calls” constitutes a reasonable inference from the record before him and we find no error in it. Decision at 5.

Applicant also challenges the Judge’s finding that his “notes are not available because they were destroyed after the ROI was completed,” and contends that he “did not personally destroy the notes in [his] case file after the ROI was completed,” but rather “turned [his] case files, including [his] notes from these interviews, into [his] field office as required by DCSA policy, where they are maintained by the field office Investigative Assistant and the Special Agent in Charge until they are destroyed at a later time by one of those individuals after the case has been adjudicated and a required waiting period has passed.” Appeal Brief at 1. However, the Judge’s finding about the notes’ disposition does not indicate, either implicitly or explicitly, that Applicant was responsible for their destruction and consequential unavailability. Once again, we find no error in this finding. The Judge’s material findings of security concern are “based upon substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence,” and Applicant has cited to no harmful error in the Judge’s findings. *See* ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Finally, Applicant argues that the Judge failed to adequately consider “that it was the DCSA’s decision . . . to have source interviews conducted solely by telephone with no way of positively identifying a source being interviewed, and despite having data showing that interviews conducted by telephone are at much higher risk of obtaining inaccurate information.” Appeal Brief at 1. As an initial matter, the Board is unclear to which “data” Applicant refers. While he testified at length to his opinion that telephonic interviews are inferior to those conducted in-person, we see

nothing in the record regarding data to substantiate his opinion. Additionally, this argument amounts to a disagreement with the Judge's weighing of the evidence, which is not sufficient to demonstrate that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See* ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

Applicant has not established that the Judge committed harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, and the record evidence supports that the Judge's findings and conclusions are sustainable. "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). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." Directive, Encl. 2, App. A ¶ 2(b).

Order

The Judge's decision is **AFFIRMED**.

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

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

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