

KEYWORD: Guideline B; Guideline J; Guideline E

DIGEST: The weight assigned to evidence is a matter within the Judge's discretion. We will not disturb a Judge's weighing of the evidence unless it is arbitrary, capricious, or contrary to law. In a whole-person analysis, a Judge should evaluate an applicant's conduct and circumstances in light of the record as a whole. We find no error in the Judge's analysis. Adverse decision affirmed.

CASENO: 14-04587.a1

DATE: 12/23/2015

DATE: December 23, 2015

In Re:

Applicant for Security Clearance

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) ISCR Case No. 14-04587
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Richard Morris, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 22, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), 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 hearing. On October 7, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 is arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline B are not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact

In 2013, Applicant was in a department store. She examined some baby clothes as a possible gift for a friend, placing them in her bag. She decided not to pay for the clothes and left the store. Stopped by a store official, she was searched. The official took the clothes as well as some sunglasses, which Applicant contended actually belonged to her. However, authorities treated these items as contraband as well, despite Applicant’s claims to the contrary.

Applicant was charged with Felony Grand Larceny. Applicant pled to this offense and completed 63 hours of community service. Applicant will be on probation until March 2016, although she has been on a lower level of supervision since March 2014. After completion of probation, authorities will decide if the offense should be dismissed or reduced to a misdemeanor. Applicant states that this is an isolated event. She had the money to pay for the clothes and does not know why she took them. Applicant is ashamed of her conduct and avers that she has learned from her mistake.

Applicant enjoys an excellent reputation for the quality of her job performance, as well as for her trustworthiness. She has received numerous awards from her job and from her school.

The Judge’s Analysis

As stated above, the Judge resolved the Guideline B allegations in Applicant’s favor. Regarding Guideline J, however, the Judge noted that Applicant remains on probation. She characterized Applicant’s misconduct as recent and as a serious lapse in judgment. In the whole-person analysis, the Judge noted Applicant’s plea of guilty and her completion of community service. However, she concluded that, insofar as Applicant remains on probation, it is too soon to tell if she has mitigated the concerns in her case.

Discussion

Applicant contends that the Judge did not perform a proper whole-person analysis. She argues that the Judge placed too much weight on a single factor, her ongoing probation. She argues that the evidence as a whole shows that she has rehabilitated herself and that she has mitigated the concerns arising from her misconduct. The weight that a Judge assigns to evidence is a matter within his or her discretion. We will not disturb a Judge’s weighing of the evidence unless it is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-05251 at 3-4 (App. Bd. Oct. 5, 2015). In performing a whole-person analysis, a Judge should evaluate an applicant’s conduct and circumstances in light of the record as a whole. *See, e.g.*, ISCR Case No. 12-04813 at 4 (App. Bd. Jul. 31, 2015). We find no error in the Judge’s analysis. Applicant admitted the conduct at issue here, including her probationary status, which in and of itself is a disqualifying condition. Directive, Enclosure 2 ¶ 31(d). Accordingly, Applicant bore the burden of persuasion that she should have a clearance. Directive ¶ E3.1.15. Given the seriousness of the offense, the circumstances underlying it (including evidence that she could have paid for the clothing but simply chose not to), and her ongoing probation, we find no error in the Judge’s conclusion that Applicant had failed to meet her burden of persuasion. We find no reason to conclude that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Moreover, we conclude that the Judge complied with the requirements of the Directive in performing her whole-person analysis.

The Judge examined the relevant data 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, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra’anan
Michael Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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