

KEYWORD: Guideline H; Guideline E

DIGEST: The Judge's finding that Applicant deliberately falsified his application is consistent with the record evidence. Adverse decision affirmed

CASENO: 14-01888.a1

DATE: 11/13/2015

DATE: November 13, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-01888
)	
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 September 15, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for

that decision—security concerns raised under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 21, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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 erred in finding that his false statements on his security clearance application (SCA) were deliberate. The Judge’s favorable findings under Guideline H are not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact

The Judge made the following findings pertinent to the issues raised on appeal. Applicant enlisted in the U.S. military in 2005. After a urinalysis that yielded a positive result for marijuana, Applicant received non-judicial punishment and was subsequently discharged with an “other than honorable” service characterization. At the time of his drug use, Applicant held a security clearance.

When he completed his SCA, Applicant made some false statements. He did not disclose his use of marijuana. He also stated that he had received an honorable discharge, that he had served as an officer, and that he left the service because his enlistment ended. Applicant stated that he had sped through the SCA due to his eagerness to work for the DoD. Acknowledging that he had made a “foolish decision” (Decision at 3) by not telling the truth, Applicant testified that he had wanted to explain his answers to an investigator. Applicant stated that he had claimed to have been an officer due to a computer malfunction. He also stated that he considered his reason for having left the service to have been that officials brought an early end to his enlistment by administratively discharging him.

Applicant submitted no evidence regarding his work performance or his track record of handling sensitive information. Neither did he provide character references.

The Judge’s Analysis

The Judge cleared Applicant of the Guideline H security concerns arising from his use of marijuana. However, she reached an opposite conclusion regarding false statements about his drug use, his having used marijuana while holding a clearance, and his claim to have been an officer who received an honorable discharge. She found that these statements were deliberately false, citing to his testimony that he had intentionally answered the questions falsely, hoping instead to explain his circumstances to an investigator. She concluded that Applicant’s misrepresentations about his having been an officer and having received an honorable discharge were not credible, discounting his contention that the answers had been simple mistakes. In evaluating Applicant’s case for mitigation, the Judge again stated that Applicant’s various explanations for his false statements were not credible.

In the whole person analysis, the Judge noted Applicant's desire to work for the DoD. She stated that, seemingly, this desire resulted in his having made "an impetuous and bad decision" (*Id.* at 9) to misrepresent facts or to omit material information from his SCA. She stated that his decision to make numerous false statements undermines his judgment.

Discussion

In his appeal brief, Applicant states the following: "I am aware that my signature on the [SCA] means I consent to all information provided, and my answers are not taken lightly. As such, they should be accurate and *I should seek to clarify what I do not know* prior to completing all federal forms." (emphasis added) We construe this as an argument that Applicant's answers were not deliberately false but, rather, the result of mistakes or ignorance. When evaluating the deliberate nature of an applicant's omissions or false statements, a Judge should consider the applicant's *mens rea* in light of the entirety of the record evidence. *See, e.g.*, ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015). In this case, the Judge's finding that Applicant deliberately falsified his SCA is consistent with the record that was before her.

In support of his appeal, Applicant has submitted some documents not contained in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. The Judge examined the relevant data and articulated a satisfactory explanation for the decision. Refusal to provide truthful answers during the security clearance process "will normally result in an unfavorable clearance action[.]" Directive, Enclosure 2 ¶ 15(b). 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 Y. Ra'anan
Michael Y. 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