

KEYWORD: Guideline E; Guideline G; Guideline H; Guideline J

DIGEST: Applicant has mitigated the security concerns based on alcohol consumption and drug involvement but has not mitigated security concerns based on personal conduct and criminal conduct. The Judge’s conclusion that Applicant’s lack of candor in completing his SCA raises security concerns that have not been mitigated is sustainable. Adverse decision affirmed.

CASENO: 08-11944.al

DATE: 08/15/2011

DATE: August 15, 2011

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In Re:)	
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-----)	ISCR Case No. 08-11944
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Francis J. Flanagan, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 25, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct),

Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 19, 2011, after the hearing, Administrative Judge LeRoy F. Foreman denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether the Judge's adverse security clearance decision is inconsistent with the Judge's findings, and whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.

The Judge made the following pertinent findings of fact: Applicant is 56 years old. He has held a security clearance since 1998. Applicant began consuming alcohol in high school. While in the Navy, he consumed two to four beers every day after working hours, and after his discharge he sometimes consumed more than six beers at a sitting. In the late 1990s he increased his beer consumption because of his marital problems, occasionally consuming eight or nine beers in an evening. He began purchasing and using marijuana in the 1970s, using it five or six times a year. He stopped using marijuana during the late 1980s, but resumed use in the 1990s, when he purchased it four to six times a year and used it once or twice a month. He stopped purchasing and using marijuana and drinking alcohol after he was seriously injured in a motorcycle accident in 2009. Applicant was involved in alcohol-related driving incidents in 1977, 1995, 2004, 2007, and culminating in the 2009 accident where he was intoxicated and riding his motorcycle. Additionally, in 2006, Applicant was charged with possession of marijuana and driving with a suspended or revoked license. In October 2009, Applicant was stopped for having an expired inspection sticker and arrested for driving on a suspended license.

Applicant began court-ordered outpatient treatment in December 2009. He was discharged from the program in February 2010. The diagnostic summary comments favorably on his progress but does not include a prognosis. Applicant received counseling from a psychologist for about six weeks before the hearing.

Applicant submitted a security clearance application in May 2008. When asked if he had ever been charged with or convicted of any offenses related to alcohol or drugs, he did not disclose his DUI arrests in 1977 and 1995 or his arrest for possession of marijuana in 2006. On the same application he also did not disclose his marijuana use. At the hearing, he admitted that he intentionally falsified his answer to this question because he was concerned that it would harm his career if he admitted his marijuana use. In an interview with a security investigator in April 2010, Appellant admitted that he deliberately lied during prior interviews about his marijuana use and the amount of his alcohol consumption.

The Judge reached the following conclusions: Applicant mitigated the security concerns under the Alcohol Consumption and the Drug Involvement Guidelines. Under the Personal Conduct Guideline, Applicant failed to mitigate numerous instances of deliberate falsification of his past alcohol, drug, and arrest history during official government inquiries. Likewise, Applicant was unable to mitigate the government's security concerns under the Criminal Conduct Guideline relating to his falsifications.

Applicant argues that the Judge's ultimate decision is inconsistent with his findings. He states that, although the Judge concluded that he had mitigated the security concerns based upon alcohol consumption and drug involvement, unfortunately the Judge found that he had not mitigated the security concerns based upon personal conduct and criminal conduct. Applicant asserts that his alcohol consumption and drug involvement was the source of his personal conduct and criminal conduct. He argues that a finding of mitigation for alcohol consumption and drug involvement should likewise mitigate further concerns about his behavior rising from said previous activities. Applicant also maintains that he is not vulnerable to coercion, exploitation, or duress. Applicant's assertions do not establish error on the part of the Judge.

Applicant stresses the mitigating evidence relating to his alcohol and drug use, and focuses on the underlying conduct when arguing that the Judge's adverse decision concerning his numerous falsifications should be reversed. Applicant appears to argue that the security significance of the falsifications derives from the security significance of the events that were the subject of the falsifications. This argument lacks merit. An act of falsification has security significance independent of any significance of the underlying conduct. *See, e.g.,* ISCR Case No. 01-19278 at 7-8 (App. Bd. Apr. 22, 2003). The mitigation of the underlying conduct has little bearing on the security significance of the falsification, particularly in a case like this one, involving a pattern of multiple falsifications. Additionally, in the context of this case, Applicant's assertion that the record evidence establishes that he is not subject to coercion, exploitation, or duress does not establish error.

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). "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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

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

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board