KEYWORD: Guideline H; Guideline E

DIGEST: The Judge's findings about Applicant's intentions are supported by substantial record evidence. Adverse decision affirmed.

CASENO: 08-07759.a1

DATE: 03/23/2010

DATE: March 23, 2010

In Re:	)	
	)	
------	)	ISCR Case No. 08-07759
	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 18, 2009,[1] DOHA 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). The Judge conducted a hearing.[2] On November 24, 2009, after the hearing, Administrative Judge Darlene D. Lokey Anderson denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge's finding that Applicant intentionally falsified his security clearance application (SCA) is supported by substantial record evidence; whether the Judge's weighing of the evidence is erroneous; and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge found that Applicant has been employed in the Defense industry since 1986. He has held a security clearance for the past 23 years. He used marijuana in 1986 "on a quarterly basis;" from 1986 to 1994 "on a periodic basis;" and in 2005 "three or four times." Decision at 2. In 1994 he was arrested for possession of marijuana and for public drunkenness.

In completing his SCA, Applicant omitted information about (1) his use of marijuana in 2005; (2) his use of marijuana while holding a security clearance; and (3) his 1994 arrest. The Judge found that these omissions were deliberate.

Applicant is an excellent worker who enjoys a good reputation for stability, reliability, and competence.

On appeal, Applicant denies that he intentionally omitted the above-described information from his SCA. He points to his testimony concerning difficulty he had in completing the electronic version of the SCA. Having examined the Judge's decision and the record, we conclude that her findings about Applicant's intentions are supported by substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record."). The Judge explicitly considered Applicant's testimony regarding his intentions. Decision at 3. However,

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[1]The SOR is undated. Applicant's answer to the SOR stated that it was transmitted to him by letter dated March 18, 2009. The Judge utilized that date in her summary of the case history. Decision at 1.

[2]Applicant's answer to the SOR stated that he did not desire a hearing. The record is silent as to whether he changed his mind or whether Department Counsel requested the hearing, in accordance with Directive ¶¶ E3.1.7-8. Applicant was represented by counsel at the hearing. Applicant states in the Appeal Brief that he did not request a hearing and that the Judge erred in stating otherwise. He does not raise an issue of denial of due process. The Judge's error is harmless.

she plausibly explained why the record as a whole supported her finding of intentional omissions.[3] We conclude that the challenged findings are not in error. Neither do we find any basis for concluding that the Judge weighed the evidence in an erroneous manner. *See, e.g.*, ISCR Case No. 06-21819 at 2 (App. Bd. Aug. 13, 2009); ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007) (The Board will not disturb a Judge's weighing of the evidence unless it is arbitrary, capricious, or contrary to law).

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the 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 Judge's adverse 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).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

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

[3]For example, she pointed to inconsistent statements by Applicant as to his reasons for leaving out the requested information.