

KEYWORD: Guideline H; Guideline J; Guideline E

DIGEST: The Judge concluded that the repeated nature of Applicant’s falsifications left him with substantial doubt as to Applicant’s fitness for a clearance. Despite Applicant’s challenge of the Judge’s finding that his false statements and omissions were deliberate, the Board declines to disturb the Judge’s findings, and gives deference to the Judge’s credibility determinations. Adverse decision affirmed.

CASENO: 11-03302.a1

DATE: 04/23/2013

DATE: April 23, 2013

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In Re:)	
)	
-----)	ISCR Case No. 11-03302
)	
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 May 8, 2012, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement), 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 February 12, 2013,¹ after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., 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 erred in finding that his omissions from the security clearance applications (SCA) were deliberate; whether the Judge failed to consider all of the evidence in the record; and whether the adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guidelines H and J, as well as a favorable finding regarding one of the Guideline E allegations, are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has an extensive history of using illegal drugs. He used marijuana at varying times beginning in 1976. He has bought and/or sold marijuana occasionally and has experimented with hashish and quaaludes. He has tried PCP once, and he has used cocaine from 1988 to 1989, occasionally buying and selling it. He has used speed and, in 2002, he resumed his use of cocaine. He once used a muscle relaxant without a prescription and has purchased LSD.

Applicant has made false statements concerning his involvement with illegal drugs. He enlisted in the military in the early 1980s, falsifying his enlistment document and a clearance application by failing to disclose prior drug use. In his Answer to the SOR, Applicant asserted that a recruiter had advised him not to disclose his drug use. In an affidavit in 1996, Applicant admitted that he had falsified his enlistment and clearance documents, but he made no reference to any extenuating circumstances, including advice from a recruiter.²

Applicant completed another SCA in 1995, in which he failed to disclose the full extent of his drug involvement, and he completed others in 2001 and 2010, which contained similar omissions, particularly the extent to which he had used drugs while holding a security clearance. The Judge found that these omissions were deliberate.

Applicant enjoys a good reputation among co-workers and other associates. However, it is not clear that they are aware of the full extent of Applicant's security-significant conduct.

The Judge's Analysis

Although the Judge found that Applicant's circumstances raised concerns under all three of the Guidelines alleged, he concluded that Applicant had mitigated those under Guidelines H and J. However, he concluded that Applicant had failed to demonstrate mitigation under Guideline E. He

¹The file copy of the Decision is not dated. The letter from DOHA advising Applicant of the adverse decision was dated February 12, 2013.

²See Government Exhibit 3, Statement of Subject, dated May 20, 1996, at 4: "I knowingly falsified my . . . enlistment forms in 1982 and my [SCA] for my SECRET security clearance in 1982 concerning my illegal drug use."

cited the repeated nature of Applicant's falsifications and the needs of the Government for complete candor in evaluating applicant's for access to classified information. The Judge stated that Applicant appeared willing to put his own interests over the legitimate requirements of the Government. He also stated that there is no clear indication that Applicant has ever fully disclosed the extent of his drug involvement or that he has ever acknowledged using drugs while possessing a clearance, "despite overwhelming evidence that he had done so." Decision at 6. The Judge also cited to evidence that Applicant had failed to be completely candid in his 1996 affidavit.³ He concluded that the record left him with "substantial doubt" as to Applicant's fitness for a clearance. *Id.* at 8.

Discussion

Applicant has challenged the Judge's finding that his false statements and omissions were deliberate. Applicant contends that he misunderstood the questions at issue. When evaluating an applicant's state of mind, the Judge must consider the false statements or omissions in light of the record as a whole. *See, e.g.*, ISCR Case No. 10-04144 at 2 (App. Bd. Jan. 29, 2013). In this case, the Judge concluded that Applicant was not credible in contending that he misunderstood the questions or otherwise lacked an intent to deceive, noting Applicant's high level of education and the clarity of the questions themselves. He found Applicant's claims to be "wholly unbelievable." Decision at 3 n. 5. We find no reason to disturb the Judge's finding as to the deliberate nature of the falsifications.⁴ *See* Directive ¶ E3.1.32.1 ("[T]he Appeal Board shall give deference to the credibility determinations of the Administrative Judge.")

Applicant contends that the Judge failed to consider evidence favorable to him, for example the testimony of his wife. He also contends that the Judge did not properly weigh his character references. Given the nature and extent of Applicant's omissions, and taking into account the Judge's credibility determination, we conclude that Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Moreover, a disagreement with the Judge's weighing of the evidence is not sufficient to demonstrate error. We find no reason to disturb the Judge's weighing of the evidence. *See, e.g.*, ISCR Case No. 11-07821 at 3 (App. Bd. Feb. 25, 2013).

The record supports a conclusion 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). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be

³This was not alleged in the SOR. Conduct not alleged can be considered for a number of reasons, including assessing an applicant's credibility and evaluating his case for mitigation. *See, e.g.*, ISCR Case No. 11-02441 at 3 n. 4 (App. Bd. Feb. 15, 2013).

⁴Record evidence of the multiple nature of Applicant's omissions, occurring over several years' time, also supports the challenged finding.

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: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board