

KEYWORD: Guideline E

DIGEST: The Judge's conclusion that Applicant lacked credibility was consistent with the record that was before her. Adverse Decision Affirmed.

CASENO: 11-06649.a1

DATE: 02/21/2014

DATE: February 21, 2014

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In Re: )  
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----- ) ISCR Case No. 11-06649  
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Applicant for Security Clearance )  
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Alan V. Edmunds, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 11, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) of Department of

Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On November 29, 2013, after conducting a hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Rita C. O'Brien 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 was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

### **The Judge's Findings of Fact**

Applicant has a bachelor's degree. She has worked for her current employer, a Federal contractor, since 2002. She has held a security clearance since that year, and, since 2005, she has held a top secret clearance.

In 2000 Applicant was arrested and charged with three misdemeanor counts of destruction of private property. Her boyfriend accused her of damaging his car during an argument with him. The police responded, taking Applicant to the police station, charging her, and releasing her with a court date. At the hearing, she stated that she was aware of these charges and that they had all been dismissed.

In 2002, Applicant was arrested and charged with destruction of property, a felony. During her clearance interview, she stated that she had had an argument with her boyfriend, during which she damaged his screen door. Applicant was arrested and subsequently released. In her response to the SOR, Applicant stated that the charge was based upon her boyfriend's claim that she had keyed his car.

In the court hearing resulting from the 2002 incident, Applicant was represented by an attorney. In her response to the SOR, she stated that her attorney had told her that the charge was being reduced to a misdemeanor. During her clearance interview, she stated that the charge had been dismissed. She testified that she did not know that the 2002 charge was a felony. She stated that she did not realize this until completing a job application.

When she completed her security clearance application (SCA) in 2010, she answered "no" to the following question: "Have you EVER been charged with any felony offense?" At the hearing, she stated that she had not been aware that the 2002 offense was a felony.

In completing DOHA interrogatories in 2013, Applicant certified that the investigator's summary of her interview was correct. During the interview, she denied having been arrested on a felony charge or for any offense, regardless of the severity. When confronted with the 2002 arrest, Applicant stated that she had not listed it because she was uncertain about the time frame required by the question. In addition, she did not disclose her 2000 arrest to the investigator. At the hearing, she testified that she did not remember whether she had disclosed the 2000 arrest or not. She also testified that she did not admit the 2002 arrest because she did not know it was a felony. When

cross-examined about her contention that she had been uncertain as to the time-frame, Applicant again stated that she thought all of her charges were misdemeanors. She testified that, because the charges were dismissed, she believed that she did not have to report them.

### **The Judge's Analysis**

In evaluating whether Applicant's omissions were deliberate, the Judge stated that the SCA question at issue was straightforward and that the word "EVER" was written in capital letters, distinguishing it from questions that were time-limited. She stated that Applicant had failed to disclose either of these arrests during her clearance interview, admitting the 2002 incident only when the investigator confronted her with it. She did not disclose the 2000 incident at all during her interview. The Judge also cited to Applicant's inconsistent statements about her reasons for not disclosing the felony. She found that Applicant's knowledge that this incident had been reduced to a misdemeanor was a reason to believe that she had been aware that it had originally been a felony. She concluded that Applicant's omissions were deliberate.

In evaluating Applicant's case for mitigation, the Judge stated that she could not conclude that the security-significant conduct will not recur, because Applicant continued to give conflicting testimony at the hearing after having failed to be forthcoming in her SCA. In the whole-person analysis, the Judge noted Applicant's good work record. She stated, however, that it was not credible that Applicant would not have understood a simply-worded question. She stated that Applicant's having concealed her arrests during the interview undermined her credibility.

### **Discussion**

Applicant contends that the Judge erred in finding that her omissions were deliberate. However, the Judge made appropriate findings concerning the circumstances of the omissions at issue here, particularly regarding the clarity of the questions and Applicant's inconsistent statements. The Judge's conclusion that Applicant lacked credibility was consistent with the record that was before her. *See* ISCR Case No. 11-00541 at 3 (App. Bd. Dec. 5, 2012) (The Appeal Board gives deference to a Judge's credibility determinations). The Judge's findings about the deliberate nature of the omissions reflect a reasonable interpretation of the record as a whole. *See, e.g.*, ISCR Case No. 10-03732 at 5 (App. Bd. Jun. 14, 2013).

Applicant cites to record evidence such as her having held a clearance for many years without incident. This was evidence that the Judge was required to consider, along with all the other evidence in the record. The Judge made findings about Applicant's circumstances, including matters favorable to Applicant such as her good work record and that she has held a clearance since 2002. Given the importance of candor during a clearance investigation, however, the Judge's treatment of the evidence is sustainable.<sup>1</sup> Applicant has not rebutted the presumption that the Judge considered

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<sup>1</sup>*See* Directive, Enclosure 2 ¶ 15: "The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *Of special interest is any failure to provide truthful and*

all of the evidence in the record, nor has she demonstrated that the Judge’s decision contravened the weight of that evidence. *See, e.g.*, ISCR Case No. 12-01977 at 2-3 (App. Bd. Dec. 30, 2012).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. 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

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*candid answers during the security clearance process . . .*” (emphasis added) This language places an applicant’s truthfulness and candor during the processing of his or her SCA at the heart of Guideline E. *See, e.g.*, ISCR Case No. 08-07575 at 2 (App. Bd. Oct. 8, 2010).