

KEYWORD: Guideline F; Guideline E

DIGEST: When examining an applicant's intent the judge must consider applicants statements in light of the record as a whole. The Judge's conclusion that Applicant's omissions were motivated by an interest in avoiding embarrassment are sustainable on this record. Adverse decision affirmed.

CASENO: 11-08507.a1

DATE: 06/07/2013

DATE: June 7, 2013

_____ )	
In Re: )	
)	
----- )	ISCR Case No. 11-08507
)	
)	
Applicant for Security Clearance )	
_____ )	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

John Bayard Glendon, Esq., Deputy Chief Department Counsel

**FOR APPLICANT**

Christopher Graham, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 13, 2012, DoD issued a statement of reasons (SOR) advising Applicant of the basis for

that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 8, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Thomas M. Crean 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 certain of the Judge’s findings of fact were supported by substantial record evidence, whether the Judge failed to consider significant record evidence favorable to Applicant, and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline F, and 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**

The Judge made the following findings pertinent to the issues raised on appeal: Applicant is employed by a Defense contractor. She holds a bachelor’s degree as well as a master’s. She served in the Air Force for 25 years.

In 2004, Applicant engaged in an altercation with her husband, who was having an extramarital affair. As a result of this altercation, Applicant was apprehended by the police and charged with first degree assault, second degree assault, reckless endangerment, trespassing, and malicious destruction of property. She received probation before judgment and was fined \$250. The Judge later expunged the offenses from her record.<sup>1</sup>

Applicant completed security clearance applications (SCAs) in 2007, 2009, and 2010. Each SCA inquired if, within the previous seven years, she had been issued a summons, citation, or ticket to appear in court on criminal proceedings. Each SCA stated that Applicant must list any offense, even if it had been sealed, expunged, stricken from the court record, or even if the charges had been dismissed. On each SCA, Applicant omitted reference to the 2004 incident involving her husband. In 2009, Applicant was interviewed by a security clearance investigator. She denied the arrest. Soon thereafter, she was re-interviewed and specifically asked about the 2004 arrest for assault. She acknowledged the arrest and discussed it completely.

Applicant is “almost sure” she read the instruction on the SCAs before answering the questions. She regarded the incident as something she wanted to put behind her. She was embarrassed to reveal the incident to the Government. She believed that Government agents would tell others about it, which would be embarrassing. She stated that she had experienced difficulties in her life, including her divorce, the death of her brother, and the stress of graduate school. She stated that her attorney told her the incident was no longer in her record.

---

<sup>1</sup>Applicant denied that she had committed the charged offenses. This incident was not separately alleged in the SOR.

Applicant enjoys an excellent reputation for the quality of her work and for her trustworthiness and good judgment. She has received performance awards and high performance ratings.

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

The Judge concluded that Applicant's omissions were deliberate. He cited to her testimony that she was embarrassed by the incident and no longer wanted to answer questions about it. He concluded that she did not omit the offenses because of a belief that they had been expunged. He noted that she did not admit the offense until confronted by the second interviewer. In the whole-person analysis, the Judge stated that Applicant's conduct indicated a willingness to put her interest in avoiding embarrassment over the Government's requirement for truthful information regarding her worthiness for a clearance. The Judge concluded that Applicant had failed to mitigate the security concerns arising from her omissions to her SCAs and to her interview.

### **Discussion**

Applicant challenges the Judge's finding that she had deliberately omitted her offenses from the SCAs. She argues that the Judge ignored her testimony that she had been told by a lawyer that she did not have to mention the offenses. She challenges the Judge's finding that she had omitted the offenses because of embarrassment.

In regard first to Applicant's contention that the Judge ignored her testimony about the expungement order and advice of counsel, we note that the Judge made findings about this evidence and discussed these findings in the Analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence. *See, e.g.*, ISCR Case No. 11-01027 at 3 (App. Bd. Jul. 9, 2012).

Regarding the challenged findings about the deliberate nature of the omissions, we examine a Judge's findings to determine if they are supported by substantial evidence, that 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 record." ISCR Case No. 11-00970 at 2 (App. Bd. Feb. 28, 2012), quoting Directive ¶ E3.1.32.1. When examining an applicant's intent or state of mind, the Judge must consider the applicant's statements in light of the record as a whole. *See, e.g.*, ISCR Case No. 05-16743 at 2 (App. Bd. Apr. 11, 2007).

In her response to the SOR, Applicant stated that the incident in question was "the most embarrassing significant event of [her] life." *Response to SOR*, dated November 8, 2012, at 3. In her testimony at the hearing, she stated that the arrest was "the most difficult thing [she] ever had to go through" and that very few people know about it. Tr. at 30. On cross-examination, she acknowledged that she had been careful in preparing her answers to the SCAs. She went on to state that she had been undergoing considerable stress, caused by her divorce, her brother's death, and damage to her property inflicted by renters. She testified that her stress level when she prepared the SCAs was high, as a consequence of which she "didn't know what to do anymore." Tr. at 55-56.

When Department Counsel asked her specifically if she was claiming that stress had rendered her unable to provide truthful answers on numerous occasions, she reiterated the pressures she had experienced and then testified that her attorney had told her she did not have to reveal the information. Tr. at 56. Despite Applicant's testimony about the expungement order, much of her presentation at the hearing focused upon her embarrassment and stress. A reasonable person in the Judge's position could conclude that avoiding embarrassment predominated over other of Applicant's stated concerns.

Moreover, we note evidence that (1) the SCA questions were clear and unambiguous in their requirement to list even expunged offenses,<sup>2</sup> (2) Applicant is highly educated and facile in her use of English, and (3) her omissions occurred repeatedly over several years' time. The record as a whole supports the Judge's finding that Applicant's omissions were motivated not by a reasonable belief that she did not have to divulge the incident but rather by a desire to avoid mentioning an event that caused her embarrassment and that she hoped to keep secret. The record contains substantial evidence of the deliberate nature of Applicant's omissions.

We have considered Applicant's arguments regarding the sufficiency of the Judge's treatment of the mitigating conditions and whole-person factors. Applicant has proposed an alternative interpretation of the evidence, but that alone is not sufficient to demonstrate error. *See, e.g.,* ISCR Case No. 09-08295 at 3 (App. Bd. Feb. 6, 2012). The Judge examined the relevant data and articulated a satisfactory explanation for the decision. 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: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

---

<sup>2</sup>With one exception not pertinent to this case.

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