

KEYWORD: Guideline J; Guideline E

DIGEST: There is no basis to conclude that the Judge did not consider all the record evidence. Adverse decision affirmed.

CASENO: 12-11559.a1

DATE: 07/22/2014

DATE: July 22, 2014

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| In Re: |) | |
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| ----- |) | ISCR Case No. 12-11559 |
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| 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 February 19, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under 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 May 29, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman 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 in that he failed to consider significant contrary record evidence. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is an employee of a Defense contractor, having worked in that capacity since June 2012. He previously worked for Defense contractors in support of U.S. military operations overseas. He has received a favorable trustworthiness designation in the recent past, but this is his first application for a security clearance.

Applicant enjoys an excellent reputation for the quality of his duty performance, as well as for his trustworthiness and dependability. He has been cited for the high quality of his work, and fellow workers describe him as a team player and as one who would not compromise classified information.

Applicant dropped out of high school after the tenth grade but later received a general educational development (GED) certificate. He worked in various positions, experiencing periods of unemployment, before working for Defense contractors.

Applicant's record contains numerous instances of criminal conduct, that resulted in charges and/or convictions. He was convicted of a felony, unlawful wounding, for which he was sentenced to three years imprisonment, with two years and nine months suspended. Applicant asserts that an acquaintance against whom he had previously testified in a criminal proceeding threatened to kill him in retaliation. Applicant contends that he attempted to take the gun away from the person, and it discharged, wounding his assailant.

His other offenses include stalking, driving while intoxicated, assault, destruction of property, a probation violation¹, contempt of court, and public intoxication. There were two allegations each of probation violations and contempt of court, but the Judge resolved one of each of these charges in his favor, as being duplicative with the other. He also resolved one of the assault charges in Applicant's favor based upon evidence that Applicant was not the aggressor. However, for the balance of the charges, the Judge found Applicant to have committed the underlying conduct.

¹The probation violation concerned Applicant's having missed an appointment with his probation officer. He claimed that he was not able to make the appointment due to his job and that he so notified the officer. He also stated that the officer was subsequently convicted of drug offenses and of corruption. The Judge stated that there was no evidence that these infractions affected the decision to revoke probation. Decision at 4.

The Judge also found that, in an application for a trustworthiness designation in 2010 and again in his security clearance application (SCA) regarding his current adjudication, Applicant failed to disclose most of his criminal incidents. He also failed to disclose his interactions with two foreign women. The Judge noted Applicant's contention that he had left off much of this conduct upon the advice of an unnamed military official. However, the Judge also noted Applicant's acknowledgment in his clearance interview that he left out information that he feared might imperil his chance for a favorable result.²

The Judge's Analysis

The Judge found that Applicant's circumstances raised concerns under both Guidelines alleged in the SOR. Although he resolved three of the criminal charges in Applicant's favor, as well as the allegations of falsification concerning the two foreigners, he resolved the majority of the allegations against Applicant. In doing so, he cited to the deliberate nature of the falsifications and the number of criminal charges. He acknowledged that Applicant's last criminal incident, the DUI, occurred six years prior to the close of the record. However, he concluded that Applicant's numerous falsifications precluded a finding that Applicant had demonstrated rehabilitation. He also noted evidence that Applicant did not attempt to correct his falsifications until he was confronted with them.

In the whole-person analysis, the Judge noted evidence that Applicant had matured since his last incident of criminal conduct. He also noted evidence that Applicant had acquired job skills and had received satisfaction from exercising those skills in support of his country. However, the Judge stated that his deceptive answers during the clearance process showed a lack of judgment. He described Applicant's case as "sad" in that, despite the progress Applicant had made, it was the Judge's obligation to resolve close cases in favor of national security. Decision at 17.

Discussion

In his appeal brief, Applicant cites to favorable evidence, including evidence that he believes mitigates the seriousness of his felony conviction, evidence that his parole officer was charged with corruption, and evidence of his duty performance and the satisfaction he has received from doing a job well. A Judge is presumed to have considered all of the evidence in the record. In this case,

²See Government Exhibit 3, Interview Summary, at p. 6-7: "He was queried why he did not list his DUI on the case papers. He admitted that he intentionally omitted the offense. He thought that the felony was more serious [than] the DUI so he listed that down. He did not want anything else hurting his chances [of] being able to keep his overseas job and he needs a security clearance to do his current job. He was afraid that if he listed down additional charges this would hurt his chances [of] getting his security clearance." At the hearing, Applicant testified that he left offenses off his 2010 trustworthiness application. "I might had did lie [sic] to the Government here. And I maybe didn't want to disqualify myself from the job at the time." Tr. At 82. At the hearing, Applicant testified that an unnamed person from the military told him that his record was wiped clean by the grant of a trustworthiness designation. He interpreted this to mean that he did not have to list his offenses when completing his SCA. "[Q]: But you understand that [the SCA] is completely different from that, right? [A]: Yes, sir. And I lied on – I mean, I see what you are saying." Tr. a 91-93.

the Judge made extensive findings about Applicant's circumstances, including the matters raised in his appeal brief. He also discussed this evidence in the Analysis. Examining the Decision in light of the entirety of the record evidence, we find no reason to conclude that the Judge failed to consider all of the evidence or that he weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 11-13948 at 3 (App. Bd. Feb. 26, 2014). The Judge found Applicant's efforts to explain his omissions to be lacking in credibility. We give deference to a Judge's credibility determination. Directive ¶ E3.1.32.1.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. Given the extent of Applicant's criminal conduct and his numerous, recent falsifications during the processing of his applications for a trustworthiness designation and for a clearance, 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 Ra'anan

Michael 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