

KEYWORD: Guideline E

DIGEST: We find no reason to disturb the Judge’s credibility assessment. Adverse decision affirmed.

CASENO: 13-00917.a1

DATE: 07/08/2014

DATE: July 8, 2014

In Re:)	
)	
-----)	ISCR Case No. 13-00917
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Cathryn E. Young, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 19, 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). Applicant requested a hearing. On April 8, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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 concluding that his omissions from his security clearance application (SCA) were deliberate and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is seeking a clearance in connection with his employment by a Government contractor. He has held this job since 2012.

In January 2006, Applicant was cited for speeding. Fined \$210, he served 14 days in jail in lieu of payment. In May 2008, Applicant was cited for no registration, failure to provide evidence of financial responsibility, driving with a suspended/revoked license, and other charges. Convicted of the suspended/revoked license charge, he served nine days in jail in lieu of a \$896 fine. He also served 24 months probation.

In May 2012, he was cited for driving without a license, driving while license suspended, and speeding. Convicted of driving with no license, he was fined \$205, of which \$100 was suspended. The following August, Applicant was cited for using a cell phone while driving, driving with a suspended license, failure to appear, and no operator's license. He pled guilty to having no operator's license and was fined \$690, which he paid in March 2014.

In completing his SCA, Applicant failed to disclose that he had been on probation during the previous seven years. He also failed to disclose other of his offenses that were required by the questions. He stated that the questions were vague and that he did not disclose the August 2012 incident because he had not been sentenced. The Judge stated that the questions were not vague and that Applicant's explanations were not credible.

Applicant experienced three job terminations between 2006 and 2012. The first incident occurred because Applicant was working and attending school full time, as a consequence of which his duty performance suffered. On the second occasion, Applicant was fired as a security guard for sleeping on the job. The most recent termination resulted from Applicant's having damaged equipment at work.

Applicant claims that he has matured and is now responsible. He has a monthly remainder of \$989 and nearly \$9,000 in retirement savings. He has had no citations since 2012 and has a valid driver's license.

Applicant enjoys a good reputation for honesty, trustworthiness, and integrity. He has received awards and recognition for the quality of his work. However, in early 2012, he received two verbal warnings for clocking out of lunch late and for tightening a part too much.

The Judge's Analysis

The Judge concluded that Applicant was required to disclose his January 2006 and May 2008 offenses on his SCA but intentionally failed to do so. She stated that Applicant was aware that he had performed community service or served jail in lieu of the fines and that he knew he was on probation as result of the 2008 conviction. She characterized Applicant's security-significant conduct as a pattern that exhibited poor judgment and an unwillingness to follow rules. She found that none of the mitigating conditions could be said to apply. He made no effort to correct his omissions. His pattern of misconduct, viewed as a whole, is not minor and that too little time has elapsed since his last offense to ensure that Applicant has in fact matured.

In the whole-person analysis, the Judge noted Applicant's poor work history and his traffic-related offenses. She also found that Applicant was not candid concerning his August 2012 offense, although it had not been alleged in the SOR.

Discussion

Applicant challenges the Judge's finding that he had intentionally omitted required information from his SCA. In analyzing an applicant's *mens rea*, we consider his omissions in light of the entirety of the record evidence. *See, e.g.*, ISCR Case No. 12-12172 at 3 (App. Bd. Jan. 9, 2014). In this case, the Judge's finding about the clarity of the questions and about Applicant's awareness of the amounts of the fines imposed and of his having served probation support her conclusion that he deliberately omitted material facts from his SCA. We find no reason to disturb the Judge's assessment of Applicant's credibility regarding his false statements. We defer to a Judge's credibility determination. Directive ¶ E3.1.32.1.

Applicant cites to various pieces of record evidence, asserting that the Judge did not consider the evidence. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-13948 at 3 (App. Bd. Feb. 26, 2014). Applicant's argument on appeal is not sufficient to rebut that presumption. Applicant's brief cites to a Hearing Office case which, he asserts, supports his case for a clearance. We have given it due consideration. However, Hearing Office cases are binding neither on other Hearing Office Judges nor on the Board. *See, e.g.*, ISCR Case No. 13-00464 at 3 (App. Bd. Feb. 20, 2014).

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. Applicant's security-significant conduct, viewed cumulatively, sufficiently undermines his trustworthiness and reliability so as to render the decision sustainable. "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