

KEYWORD: Guideline E

DIGEST: Applicant has not rebutted the presumption that the Judge considered all the evidence. Adverse decision affirmed.

CASENO: 14-04553.a1

DATE: 04/13/2016

DATE: April 13, 2016

In Re:)
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 -----) ISCR Case No. 14-04553
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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 5, 2015, 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 decision on the written record. On January 28, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Arthur E. Marshall, 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 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 Findings of Fact

Applicant was fired from a job in 2006 for reprimanding a coworker and having lied about a hospital stay.¹ This was not alleged in the SOR. From 2008 until 2011, Applicant worked for a Defense contractor, which required him to deploy in support of U.S. military operations overseas. During a deployment, it was suggested to him that he carry a personal firearm for safety and protection of assets, and someone gave him a pistol. Applicant knew that this violated a military general order. While on a visit to the U.S., Applicant purchased a pistol of his own, disassembled it, and shipped it overseas, so that it would be available to him upon his return to the deployed location. After his return, he reassembled the pistol and carried it with him on trips off base. He stored and concealed it when it was not in use. During a subsequent period of leave by Applicant, personnel opened a case searching for supplies, leading to the discovery of Applicant’s unauthorized weapon. Applicant was ordered to surrender his identification card, was debarred from his employer’s contracts, and ordered to leave the country. Applicant subsequently resigned his employment. Applicant’s SOR also alleged that Applicant had not disclosed this infraction in his security clearance application (SCA). The Judge noted that Applicant had not mentioned it when answering a question about whether he had left a job due to misconduct. However, he also noted that Applicant had disclosed it in another part of the SCA. Applicant attributed the apparent discrepancies to “two different terminations.” Decision at 3. In his response to the SOR, Applicant stated that he had resigned in 2011 due to circumstances beyond his control. He stated that he had carried the weapon with full knowledge of his supervisors, managers, and military commanders. He provided no documentation in support of this contention.

The Judge’s Analysis

¹Applicant stated that he had covered for a fellow employee who claimed he was taking the day off to visit his girlfriend in the hospital. In fact, the girlfriend was not in the hospital and did not know where the employee was. Applicant later engaged in a heated argument with this employee, after hours on the job site. This argument was reported to management as being unprofessional, with the result that Applicant and the employee were both fired. Clearance Interview Summary at 2-3, included in Item 3, Answers to Interrogatories. The record contains evidence that Applicant was also terminated from a job due to violating his employer’s “zero tolerance” policy regarding sexual harassment, although he states that a subsequent EEO investigation concluded that the charge was not substantiated. Item 2, Security Clearance Application (SCA), at 23; Interview Summary, *supra*, at 3.

Though noting that Applicant's various statements about his 2011 job termination were not totally consistent, the Judge found that he had provided enough information about the incident so that his SCA answers, viewed as a whole, were not objectively false. However, he concluded that this job termination itself raised Guideline E concerns about Applicant's judgment and reliability. In concluding that Applicant had not mitigated this concern, the Judge stated that Applicant was aware that his conduct was prohibited and that there was no evidence that he had been granted an exemption. The Judge also found that there was no evidence corroborating Applicant's claim that he had voluntarily relinquished the gun prior to its discovery. In the whole-person analysis, the Judge reiterated many of his comments, noting in addition that there was no evidence that supervisors or commanders had tolerated Applicant's possession of a weapon. The Judge also stated that Applicant had not provided enough evidence to show rehabilitation.

Discussion

Applicant reiterates in detail information from the record concerning the circumstances underlying his unlawful possession of a weapon, his reasons for having done so, and his contention that the chain of command was aware of it. Applicant's argument is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. Neither is it sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015). Applicant's argument includes matters from outside the record, which we cannot consider. Directive ¶ E3.1.29.

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 Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: William S. Fields
William S. Fields

Administrative Judge
Member, Appeal Board

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