

KEYWORD: Guideline E

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

CASENO: 14-05198.a1

DATE: 01/08/2016

DATE: January 8, 2016

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In Re: )  
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 ----- ) ISCR Case No. 14-05198  
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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**

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 23, 2014, 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 October 27, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran 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 is a employee of a Defense contractor. He served with the U.S. military from 2004 until 2013, at which point he was discharged with a General Discharge Under Honorable Conditions due to a pattern of misconduct. He is seeking to retain a security clearance that he has held since he was in the military.

While in the miliary, Applicant had a number of disciplinary incidents. In 2009, he violated an order to refrain from contact with a female service member, for which he received nonjudicial punishment (NJP) under Article 15, UCMJ. Later that year he received a letter of reprimand (LOR) for having a “physical confrontation” with his spouse. Decision at 2. He received another LOR in 2011 for reckless driving of a motorcycle and for exceeding the speed limit. Early in 2012, he received a letter of counseling for failure to report to his place of duty. In December 2012, Applicant disobeyed an order to complete a motorcycle safety course, which resulted in NJP. He received NJP on two occasions in 2013, one for disobedience and another for absenting himself from his place of duty.

In addition to these infractions, civilian authorities cited Applicant for several traffic offenses in 2012: expired license plate, speeding, registration violation, no proof of insurance, etc. Applicant paid fines and fees arising from these incidents. Applicant has had no additional criminal arrests or citations since 2013. He believes that his actions while in the military did not constitute a pattern of misconduct but, rather, a series of isolated incidents. While on active duty Applicant deployed twice in support of U.S. military objectives. He has also served in combat zones while working for his current employer.

### **The Judge’s Analysis**

The Judge stated that Applicant has exhibited poor judgment and disregard for the law. He was not able to conclude that such incidents would not recur. He stated that Applicant’s conduct casts doubt on his reliability, trustworthiness, and good judgment.

### **Discussion**

Applicant argues that the Judge did not take into account the amount of time that had elapsed since his most recent infraction. He also contends that the Judge did not consider, or mis-weighed, his letters of recommendation and other evidence of good character, as well as his having paid the fines assessed against him, etc. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015). Neither has he shown that the Judge mis-weighed the evidence. Applicant draws our attention to another Hearing Office case that, he believes, supports his effort to retain his clearance. Each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015).

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: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

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