

KEYWORD: Guideline B; Guideline E

DIGEST: Applicant contends on appeal that the Judge erred in concluding that the evidence sets forth Guideline E security concerns, in that the evidence does not demonstrate that her omissions were deliberate. In evaluating an applicant's state of mind, the Judge must examine the omissions or false statements in light of the entirety of the record evidence. The Judge took into account the fact that the questions at issue "are neither difficult, confusing or misleading." She also considered Applicant's various explanations for the omissions, concluding that "none of her explanations for failing to answer the questions accurately are reasonable or even comprehensible." The Board concludes that the Judge's finding that Applicant's omissions were deliberate is supported by substantial record evidence. An applicant's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 07-00196.a1

DATE: 02/20/2009

DATE: February 20, 2009

In Re:)	
)	
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)	ISCR Case No. 07-00196
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Alan Dickson, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 4, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 25, 2008, after the hearing, Administrative Judge Darlene D. Lokey Anderson denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the record establishes security concerns under Guideline E; whether the Judge’s application of the Guideline E mitigating conditions is erroneous; and whether the Judge’s whole-person analysis is erroneous.¹ Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant was born in Lebanon to a U.S. mother and a Lebanese father, who later became a U.S. citizen. Her family moved from Lebanon to the United Kingdom when Applicant was a child. Due to her education and upbringing, Applicant learned to speak Arabic, French, and English while a child. Upon reaching the age of 20 Applicant moved to the U.S. to attend college.

In the early 2000s Applicant and her brother started a company in the U.S. for the purpose of engaging in international trade with countries in the Middle East. Applicant’s father began working as a consultant for Applicant’s company after securing a contract with the U.S. DoD. He was a dual citizen of Lebanon and the U.S. and, at the time of the contract, was living in Lebanon. He served as a consultant for the company from May 2004 to February 2006 and from September 2006 until May 2007. Her father was also involved in Lebanese politics.

On November 4, 2005, Applicant, in furtherance of her company’s business, completed a Certificate Pertaining to Foreign Interests (SF 328). Question 5 on this form asked “Does your organization have any contracts, agreements, understandings, or arrangements with a foreign person(s)?” On February 4, 2006, Applicant completed a security clearance application (SCA). Question 12 asked “Do you have any foreign property, business connections, or financial interests?” Applicant answered “no” to each of these questions. The Judge found that these answers were false

¹The Judge’s favorable finding under Guideline B is not at issue in this appeal.

in light of her father's dual citizenship, his foreign connections, and the foreign subcontractors working with Applicant's business.

Applicant contends on appeal that the Judge erred in concluding that the evidence sets forth Guideline E security concerns, in that the evidence does not demonstrate that her omissions were deliberate. "[P]roof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred[.]" ISCR Case No. 03-10390 at 8 (App. Bd. Apr. 12, 2005). In evaluating an applicant's state of mind, the Judge must examine the omissions or false statements in light of the entirety of the record evidence. *See* ISCR Case No. 04-09429 at 3 (App. Bd. Jul. 2, 2007) ("[W]e have considered the wording of the question at issue, Applicant's level of education, his explanations for the omissions, and the record as a whole"). In this case, the Judge took into account the fact that the questions at issue "are neither difficult, confusing or misleading." Decision at 9. She also considered Applicant's various explanations for the omissions, concluding that "none of her explanations for failing to answer the questions accurately are reasonable or even comprehensible." *Id.* at 8. The Board concludes that the Judge's finding that Applicant's omissions were deliberate is supported by substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence 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 same record.")

Applicant takes issue with the Judge's weighing of certain pieces of evidence, *e.g.*, that Applicant had received no help in filling out the forms in question and that she had no prior experience in applying for a security clearance. However, a Judge is presumed to have considered all the evidence in the record unless she specifically states otherwise. *See, e.g.*, ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). "An applicant's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law." *See* ISCR Case No. 07-10454 at 2 (App. Bd. Aug. 12, 2008). The record demonstrates that the Judge considered appropriate mitigating conditions, holding in favor of Applicant as to Guideline B. However, she concluded that Applicant had failed to meet her burden of persuasion under Guideline E. *See* Directive ¶ E3.1.15. Viewed in light of the record as a whole, the Judge's adverse conclusion concerning mitigation is sustainable. The Judge's whole-person analysis is also sustainable. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). *See also Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)) "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).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, 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