

KEYWORD: Guideline J; Guideline E

DIGEST: Applicant had two been arrested twice prior to preparing his security clearance application in 2006. He reported the earlier (2001) arrest on his security clearance application adding that there was “no record of trouble” since then. He did not mention his 2003 arrest for receiving stolen property. The record supports the Judge’s decision. Adverse decision affirmed.

CASENO: 07-01371.a1

DATE: 03/28/2008

DATE: March 28, 2008

In Re:)	
)	
-----)	ISCR Case No. 07-01371
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Lenore M. Imhof, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 25, 2007, DOHA issued a statement of reasons 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 December 3, 2007, after the hearing, Administrative Judge Matthew E. Malone 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 Judge erred in concluding that Applicant had knowingly falsified his security clearance application (SCA); and whether the Judge erred in not favorably applying Guideline E mitigating conditions.¹ Finding no error, we affirm.

The Judge made the following pertinent findings: Applicant was arrested in May 2001, as he was finishing college, for possession and distribution of 100 ecstasy pills. Pleading guilty, Applicant was sentenced to five years probation, a suspended driver’s license, a fine of \$3,205.00, and 200 hours of community service. He completed his sentence in 2003 and was released from probation two years early.

In 2003 Applicant was arrested for receiving stolen property, having been stopped by the police for riding in a stolen car driven by a friend. The charge was subsequently dismissed as Applicant had not known that the car was stolen. On February 2, 2006,² when completing his SCA, Applicant answered “yes” to a question concerning his having been arrested, charged, or convicted within the seven years prior. He listed the 2001 arrest and conviction but did not mention the 2003 arrest. The Judge noted that, on the SCA, Applicant stated that “there is no record of trouble” since the 2001 incident. Decision at 4.

The Judge concluded that, in not mentioning the 2003 arrest, Applicant had knowingly omitted information that he was legally required to disclose. He stated, in the Conclusions section of his decision, the Applicant “provided inconsistent explanations for his omission of the 2003 arrest . . . At his hearing he claimed he was so focused on the details of the 2001 arrest he forgot about the 2003 arrest. Yet, in providing details about the 2001 arrest . . . he affirmatively stated he had not been involved since 2001 in any other adverse criminal conduct.” Decision at 6.

The Judge noted that Applicant did not disclose the second incident until confronted with it during the investigative interview, which precluded a conclusion that he had made a prompt, good-faith effort to correct the omission. The Board also notes record evidence that Applicant was an honors graduate of a well-known university, thereby evidencing a level of sophistication consistent

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

²The SOR states that Applicant executed the SCA on January 23, 2006. The first page of the SCA (Government Exhibit [GE] 1) states that it was certified on February 2, 2006, the date upon which the Judge found Applicant completed the SCA. The January date alleged in the SOR does not appear in GE 1.

with the Judge's view that Applicant intended the plain meaning of his words. The Board also notes that Applicant's appeal brief attributes his omission to the haste in which he filled out the SCA, which appears inconsistent with his testimony that he was simply too focused on the first event to recall the second.

Viewed in the light of the record as a whole, the Judge has articulated "a satisfactory explanation for [his] conclusions, including a rational connection between the facts found" and his adverse decision, both as to the intentional nature of Applicant's omission as well as the application of Guideline E mitigating conditions. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). The record supports the Judge's conclusion that Applicant has not met his burden of persuasion that it is "clearly consistent with the interests of the national security" for him to have a clearance. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Accordingly, the Board concludes that the Judge's decision is not arbitrary, capricious, or contrary to law.

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin
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