

KEYWORD: Guideline K; Guideline E

DIGEST: An applicant who has committed security violations has a very heavy burden on appeal. Such violations strike at the very heart of the industrial security program. Thus claims of reform or rehabilitation require strict scrutiny. Adverse decision affirmed.

CASENO: 09-00274.a1

DATE: 12/08/2010

DATE: December 8, 2010

In Re:)
)
)
 -----) ISCR Case No. 09-00274
)
)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Gina L. Marine, Esq., Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 20, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of

the basis for that decision—security concerns raised under Guideline K (Handling Protected Information) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 30, 2010, after the hearing, Administrative Judge Elizabeth M. Matchinski 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge found that Applicant is a senior administrative associate for a defense contractor’s security department. She has worked for this employer since 1984 and has held her current position since November 2005. She has held a security clearance since 1984.

Between 2001 and 2005 Applicant committed five security violations. On four occasions she failed to secure the document control area and on another she failed to protect a classified document. Regarding this last incident, the document was knocked off Applicant’s desk into a waste basket and deposited in a trash bin. It was recovered six days later at a refuse facility. Additionally, Applicant used marijuana from 1974 until 1995 and cocaine from 1986 until 1994. Much of this use occurred while Applicant held a security clearance. In 1997 Applicant answered “no” to a question on her security clearance application (SCA) as to whether she had used illegal drugs within the previous seven years. This answer was false, due to the drug use described above. Additionally, in SCAs completed in 1997, 2002, and 2008 Applicant answered “no” to a question inquiring about whether she had ever used illegal drugs while holding a security clearance. Although these false answers were not alleged in the SOR, the Judge considered them on the question of rehabilitation. *See* ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

In the Analysis portion of her decision, the Judge acknowledged the passage of time since Applicant’s last security violation. However, she concluded that this was not sufficient to mitigate the security concerns arising from Applicant’s security violations, especially insofar as, during the intervening years, Applicant had limited access to classified information, which diminished her opportunity to demonstrate rehabilitation. The Judge also noted that following her various security incidents Applicant had received counseling, yet she committed further violations despite that fact. Regarding the false statement, the Judge properly took notice of the other, more recent, falsifications, which are inconsistent with rehabilitation and reform.

Applicant contends that the Judge did not consider all of the record evidence, or did not properly weigh the evidence, to include her many years of incident-free service and the supportive testimony provided by co-workers and friends. However, Applicant’s presentation on appeal is not sufficient to rebut the presumption that the Judge considered all of the record evidence. *See, e.g.*, ISCR Case No. 09-01735 at 2 (App. Bd. Aug. 31, 2010). Neither is Applicant’s presentation sufficient to demonstrate that the Judge’s decision was contrary to the greater weight of the record evidence. *See, e.g.*, ISCR Case No. 09-01970 at 3 (App. Bd. Oct. 29, 2010). Once it is established that an applicant has committed security violations, he or she has a “very heavy burden” of

persuasion as to mitigation. Such violations “strike at the heart of the industrial security program.” Accordingly, a Judge must give any claims of reform or rehabilitation “strict scrutiny.” ISCR Case No. 06-21537 at 4 (App. Bd. Feb. 21, 2008).

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *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 Judge’s adverse 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).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan _____

Michael Y. 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