

KEYWORD: Guideline E

DIGEST: Given record evidence, to include admissions by Applicant, that Applicant’s security significant conduct constituted an act of fraud, the Judge’s credibility determination was sustainable. The Judge’s findings constitute a reasonable interpretation of the record evidence. Adverse decision affirmed.

CASE NO: 09-07597.a1

DATE: 10/19/2011

DATE: October 19, 2011

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In Re:)	
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-----)	ISCR Case No. 09-07597
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Alison O’Connell, Esq., Department Counsel

FOR APPLICANT

Richard L. Morris, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 21, 2010, DOHA 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 July 25, 2011, after the hearing, Administrative Judge Thomas M. Crean denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge failed to consider all of

the record evidence; whether the Judge erred in his credibility determination; and whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is a systems engineer working for a Defense contractor (Contractor B). A college graduate with a degree in management information systems, he is married with two children. He previously worked for another Defense contractor (Contractor A).

While performing temporary duty (TDY) at a military installation for Contractor A in 2007, Applicant stayed with his sister, who lived nearby. He submitted a travel voucher requesting reimbursement for lodging expenses. The voucher noted that he paid a \$450 lodging expense in cash. In fact, his sister did not operate a lodging business, and she did not provide him with a receipt. He did not reimburse his sister for any expenses she incurred while he stayed with her. Contractor A did not investigate this claim.

Applicant performed TDY for Company A in 2008. The TDY was performed at the same military installation. As he had the year previously, Applicant stayed with his sister, and he listed a lodging expense on his voucher. A travel clerk for Contractor A advised Applicant that, because he did not incur a lodging expense and did not provide the company with his sister's actual expense in hosting him, the claim was disallowed. Applicant submitted an amended voucher. Applicant knew from his exchanges with the travel clerk that he could only be reimbursed for the actual expenses incurred by his sister. He did not attempt to determine the actual expense incurred by her during his stay.

In 2009, Applicant traveled to the same installation for TDY duty. Again, he stayed with his sister. When he submitted his travel voucher, he submitted a receipt from a fictitious bed and breakfast (B & B). He admitted that he created this document on his computer, giving the B & B a fictitious name, address, and lodging rate. When the travel clerk processed Applicant's voucher, she could not locate the B & B. She denied Applicant his claimed lodging expense and informed his supervisor.

Applicant began negotiating with Contractor B for a job. He notified Contractor A of these negotiations. He accepted the position with Contractor B later in 2009 and submitted his resignation. When his supervisors at Contractor A learned of this, they attempted to get him to stay. Prior to this, however, Contractor A investigated Applicant's 2009 travel voucher, concluding that his claim for the fictitious B & B was fraudulent. Applicant's supervisor counseled him and gave him an administrative warning. When he actually left Contractor A's employ, his final pay was docked by the amount of the fictitious travel expense he had claimed. Contractor A personnel submitted a report of this matter to the appropriate security officials, and Contractor B's security manager notified Applicant of the report.

Employees of Contractor A have expressed dissatisfaction with that company. There have also been "disagreements and friction" between Contractor A and other contractors who have hired Contractor A's personnel. Decision at 5.

Applicant enjoys an excellent reputation for the quality of his work performance as well as for his integrity, trustworthiness, and reliability. Some of Applicant's co-workers believe he was mistreated by Contractor A. One of his supervisors does not believe that the incident should have been reported through security channels.

In the Analysis portion of the Decision, the Judge concluded that Applicant's 2009 voucher was deliberately false. Along with his having received an administrative warning from his employer, the false voucher raised security concerns under Guideline E. The Judge went on to say:

I considered the testimony of his supervisors, friends, and fellow employees concerning his reputation for honesty, candor, reliability, judgment, and trustworthiness. I considered his reputation as an excellent employee and his record of accomplishments, and that he successfully held a security clearance for a number of years. However, offset against this good character information are his actions in knowingly and deliberately providing false documents with intent to gain monetary reimbursement for expenses he did not incur. This type of action indicates that he may not properly safeguard classified information. Decision at 10.

Applicant contends that the Judge did not consider all of the record evidence, for example his testimony acknowledging his wrongdoing. However, a Judge is presumed to have considered all of the record evidence. In this case, the Judge made extensive findings, a large portion of which were favorable to Applicant. As the above quotation demonstrates, he discussed the favorable findings in his detailed analysis. He was not required to discuss every piece of record evidence, which is a practical impossibility. *See, e.g.*, ISCR Case No. 04-12742 at 3 (App. Bd. Feb. 25, 2011). The Judge's findings and analysis constitute a reasonable interpretation of the record evidence. Applicant has not demonstrated that the Judge failed to consider the entirety of the record. Neither has he demonstrated that the Judge mis-weighed the record evidence.¹

Applicant contends that the Judge erred in his credibility determinations. He contends that the witnesses favorable to Applicant were worthy of belief and the Judge "gave no finding that any witness was not credible nor did he give any indication that any witness's testimony was not plausible or consistent with other record evidence." Applicant Brief at 6. However, while acknowledging that Applicant's witnesses held Applicant in high regard, and that the opinions of these character witnesses were uniformly favorable, the Judge nevertheless reasonably concluded that Applicant had defrauded his employer. Given Applicant's own testimony acknowledging the fraudulent nature of his conduct, there is no reason to disturb the Judge's credibility determinations, whether of Applicant or of any other witness.² *See, e.g.*, ISCR Case No. 07-17076 at 3 (App. Bd. May 11, 2011).

¹Applicant's brief once cites the Judge's application of the mitigating conditions. No elaboration is offered and we conclude that no issue of error is raised. *Compare* DDES Case No. 97-0001, in which we concluded that language in a caption, standing alone, was not sufficient to raise an assignment of error.

²Q: What is your understanding of what fraud means? [Applicant]: My understanding is intentionally performing an action that is deceptive or incorrect. Q: So, intentionally submitting an expense report with a fake lodging receipt to receive money that you didn't spend, that would fit within your definition of fraud? A: Yes." Tr. at 79.

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). *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 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