

KEYWORD: Guideline F; Guideline D; Guideline J; Guideline E

DIGEST: Judge resolved all but the Guideline E concerns in Applicant’s favor. Under Guideline E, Judge concluded that Applicant’s two job losses for misconduct, a false statement, and a failure to inform his employer of criminal charges constituted security concerns that Applicant had not mitigated. Applicant on appeal failed to rebut the presumption that the Judge considered all of the record evidence. Adverse decision affirmed.

CASE NO: 11-03294.a1

DATE: 10/24/2012

DATE: October 24, 2012

In Re:)	
)	
-----)	ISCR Case No. 11-03294
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 13, 2012, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), Guideline D (Sexual Behavior), 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 July 27, 2012, after the hearing, Administrative Judge Noreen

A. Lynch 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. The Judge's favorable findings under Guidelines F, D, and J are not at issue in this appeal. Consistent with the following, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a risk manager for a Defense contractor. He has worked for his current employer since April 2008 and has held a security clearance since 2004.

In 2009, Applicant was investigated by the local Child Protective Services (CPS) office on a complaint that he had sexually abused a girl of elementary school age. CPS substantiated the complaint, but this conclusion was reversed on appeal, due to insufficient evidence. Although Applicant was arrested and charged in late 2009 with criminal offenses based on the allegations, the charges were subsequently dropped and expunged from Applicant's record. Applicant denies committing the offenses, attributing them to the alleged victim's grudge against his daughter.

In 2010, Applicant was missing from his job. When queried, Applicant stated that he had been "dealing with his daughter." Decision at 5. When asked if he had experienced a run-in with the law, Applicant said no. Actually, Applicant had been away from his job because of his arrest for the sex offenses described above. Applicant claimed that he had requested personal leave from his employer. He did not complete a leave slip. He claimed that he had sent an e-mail to the entire management team stating his need for leave, but he did not produce the e-mail as part of his case. He did present an e-mail from someone "who vaguely remembered he has asked for some leave." *Id.*

In 2007, Applicant was terminated from a previous employment due to his having mis-used a company computer. Specifically, he used the computer at home to write some stories, and his daughter used it to perform internet searches. He understood that his employer did not permit such use of a company computer. In 2000, Applicant was terminated from employment due to an allegation that he had engaged in inappropriate sexual behavior or had made sexual advances to a female subordinate. The Judge noted Applicant's testimony that he had not fully disclosed information concerning these job terminations on his security clearance application (SCA). Tr. at 105. This was not alleged in the SOR, but the Judge stated that she was considering it as part of her whole-person analysis. *Id.*, note 2.

In the Analysis, the Judge concluded that Applicant had not committed the alleged sexual assault against the child. She resolved the Sexual Behavior and Criminal Conduct concerns in his favor. She also entered favorable findings regarding the Financial Considerations concerns. However, she reached the opposite conclusion under the Personal Conduct guideline. She stated that Applicant's work behavior had involved a pattern of dishonesty and rule violations, evidenced by his having twice been fired for misconduct, his failure to inform his employer of the criminal charges filed against him in 2009, and his false answer when queried about any legal problems. The

Judge concluded that Applicant had not accepted responsibility for his actions. Despite his having worked for his current employer with “no known incidents,” she concluded that Applicant had failed to demonstrate mitigation of the Personal Conduct security concerns. *Id.* at 14.

In his appeal brief, Applicant cites to record evidence, such as his testimony that he had informed his supervisor as to his whereabouts at the time of his arrest, his having held a clearance for several years without incident, and evidence which he believes demonstrates good judgment. He argues that the Judge failed to consider this evidence or that she did not properly weigh it. The Judge made findings about these things, discussing them in the Analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has he demonstrated that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No1 11-06688 at 2 (App. Bd. Jul. 5, 2012).

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 decision is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett
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