

KEYWORD: Guideline J; Guideline G; Guideline E

DIGEST: The Judge found Applicant deliberately omitted two arrests from his security clearance application. That finding was reasonable. Adverse decision affirmed.

CASENO: 11-04879.a1

DATE: 08/06/2013

DATE: August 6, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-04879
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Gabriel Pene, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 20, 2012, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct), Guideline G (Alcohol

Consumption), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Department Council requested a hearing. On May 24, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert Robinson Gales 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 adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline J are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

The Judge found that Applicant has consumed alcohol to the point of intoxication and passing out, from 1996 until early 2011. His alcohol consumption has resulted in six incidents involving either military or civilian authorities. These incidents are as follows: lewd behavior during Lundi Gras¹ in New Orleans; a barracks scuffle while serving in the military; drunk and disorderly conduct at a bar; two incidents of DUI; and a 2009 incident in which he was cited for disorderly conduct while intoxicated at a bar. Other than a one-day alcohol abuse educational class that he attended in the military, Applicant has never had alcohol treatment or counseling.

When he completed his security clearance application (SCA), Applicant was asked about any arrests within the previous seven years. He was also asked if he had ever been charged with offenses related to alcohol. Applicant answered "yes," listing his two DUI arrests. He did not list his two arrests for drunk and disorderly conduct. Later, when undergoing an interview in connection with his SCA, Applicant discussed his two DUI arrests but denied any other alcohol-related incidents. After being asked a second time if he was sure there were no other incidents, Applicant mentioned the earlier drunk and disorderly incident, though he denied he was arrested or charged with a crime. During a re-interview, he acknowledged his arrests for drunk and disorderly conduct.

Applicant enjoys an excellent reputation for job performance. His supervisors and co-workers describe him as trustworthy and reliable. He also enjoys an excellent reputation for his attention to detail.

The Judge's Analysis

As stated above, the Judge entered favorable findings pertaining to the allegations under Guideline J. Regarding Guidelines G and E, he concluded that Applicant had failed to mitigate concerns arising from his alcohol consumption and from his omissions on his SCA and during his interview. He noted that Applicant had not been abstinent, despite his many incidents of alcohol-related misconduct. The Judge concluded that Applicant minimized his problems with alcohol and that he was unable or unwilling to curb his drinking. Under Guideline E, the Judge found that Applicant's omissions were deliberate. He noted Applicant's reputation for being a detail person

¹Lundi Gras is the Monday before Mardi Gras (Fat Tuesday).

who does each task “right the first time, every time.” Decision at 14. This evidence tends to undermine Applicant’s evidence that he had simply forgotten about the omitted incidents. The Judge also noted that Applicant’s false statements were generally consistent with his pattern of denying and/or minimizing the extent of his alcohol abuse. The Judge concluded that the evidence, viewed as a whole, left him with doubts as to Applicant’s fitness for a clearance.

Discussion

Applicant challenges the Judge’s finding that his omissions were deliberate. In analyzing an applicant’s *mens rea*, a Judge must consider the applicant’s answers in light of the entire record. *See, e.g.*, ISCR Case No. 10-07104 at 3 (App. Bd. Feb. 25, 2013). The Judge’s explanation for this finding was reasonable and was consistent with the record that was before him. We find no error in the challenged finding.

We have considered all of the arguments in Applicant’s appeal brief. The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The 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 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