

KEYWORD: Guideline K

DIGEST: Applicant has committed four security violations between 2006 and 2012. Adverse decision affirmed.

CASENO: 13-00676.a1

DATE: 06/13/2014

DATE: June 13, 2014

In Re:)
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 -----) ISCR Case No. 13-00676
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 Applicant for Security Clearance)
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)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 23, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline K (Handling Protected Information) of

Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 24, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) 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 adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant committed four security violations while working in a classified location for his current employer, a Defense contractor. In 2006, he left a classified backup tape on a bench in the classified location. In 2012, he committed three violations. He failed to secure the lock on the door to the classified location, he left six classified hard drives in a closed area overnight without properly storing them, and subsequently installed unapproved software on a classified information system. None of these infractions resulted in actual compromise of classified information. The first three instances resulted in disciplinary action and/or additional security training for Applicant. After the last one, Applicant's employer submitted an "individual culpability report to the DoD." Decision at 4. Applicant posted a list of rules regarding acceptable use of information systems to ensure that he complied with security requirements.

A few months later, DoD suspended Applicant's security clearance. His employer reassigned him to a program that does not require a clearance. However, he testified that he was "able to do classified work with somebody else on [his] program." *Id.* at 5. By that he meant that he was permitted to work in the classified location but only when accompanied by a cleared escort. He did not actually have access to classified documents.

The Judge's Analysis

In concluding that Applicant had not mitigated the concerns arising from his security violations, the Judge noted that at least two of them were similar and, therefore, of a recurring nature. She stated that Applicant did not appear to have responded favorably to remedial training, given the number of violations found against him, and that the evidence was such that "concerns persist that he lacks appropriate security awareness." *Id.* at 9. The Judge noted Applicant's testimony that he is permitted to do classified work. Although he subsequently clarified that to mean that he merely had access to computer hardware that, though classified, was not visually classified, "he should have recognized that describing his work as classified . . . was inappropriate and could raise security flags." *Id.* The Judge concluded that Applicant's violations could not be blamed on poor security training.

In the whole-person analysis, the Judge stated that the commission of three security violations in six months casts "serious doubt" on Applicant's judgment and reliability. *Id.* at 10. The Judge noted that, were Applicant's access to classified information to be restored, he may well

resume duties which have, in the past, been performed without direct oversight. As it stands, the evidence does not lead to a conclusion that Applicant has sufficient awareness to recognize potential security issues and, therefore, seek appropriate guidance.

Discussion

Applicant challenges the Judge's comment about his working in a classified location despite his own clearance having been suspended. He stated that he did not actually have access to any classified documents and argues that the Judge misinterpreted his comment. We have examined the Judge's statements about this matter in light of her Decision as a whole. Although she did find Applicant's claim to be sufficiently problematic so as to require further clarification from him, we find no reason to believe that she ultimately misinterpreted the comment or attributed additional security violations to him. She merely stated that the way in which Applicant initially worded the comment could lead to misunderstanding. We find no reason to believe that the Judge exaggerated the extent of Applicant's security-significant conduct or that she weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 10-07881 at 2 (App. Bd. Oct. 5, 2012). The gravamen of the Judge's decision was that, despite adequate training and corrective action, Applicant had committed a series of security violations, impugning his judgment and reliability. This analysis was consistent with the record that was before the Judge. Security violations strike at the heart of the Industrial Security Program, and an applicant who has committed such violations has a "very heavy burden" in attempting to demonstrate mitigation. *See, e.g.*, ISCR Case No. 11-09219 at 3 (App. Bd. Mar. 31, 2014).

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: Michael Ra'an

Michael Ra'an
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