

KEYWORD: Guideline J; Guideline H; Guideline E

DIGEST: Applicant did not rebut the presumption that the Judge considered all of the evidence in the record. The Appeal Board is not permitted to consider the adverse impact of an unfavorable decision. Adverse decision affirmed.

CASE NO: 14-01443.a1

DATE: 04/28/2015

DATE: April 28, 2015

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In Re:	)	
	)	
-----	)	ISCR Case No. 14-01443
	)	
Applicant for Security Clearance	)	
	)	

**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 July 3, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct), Guideline H (Drug Involvement), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 17, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Martin H. Mogul 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's SOR alleges numerous arrests and/or convictions, 29 in all, for such offenses as criminal damage to property, possession of a narcotic, possession of drug paraphernalia, resisting arrest, obstructing justice, violation of parole (a felony), and others. Applicant served time in jail on four different occasions. In addition, Applicant has a history of involvement with illegal drugs. She has been addicted in crack cocaine, has purchased drugs, and, since December 2009, has lived in "a sober living house." Decision at 2. She has participated in rehabilitation programs, including Alcoholics Anonymous (AA) and Narcotics Anonymous. She began using crack cocaine in 1991, due to peer pressure and to relieve pain caused by her having been molested by a family member. She was addicted to crack for 18 years. She stated that she has been sober since December 2009.

In completing her security clearance application (SCA), Applicant provided false answers to several questions. She provided a home address that was not true, insofar she was homeless at the time in question. She alleged that she had been employed by a company from 2004 until the present, when in actuality she had been fully employed there since 2009. She acknowledged that she had provided false information, but stated that she did so in order to keep her job. Applicant also falsified material information about her police record, denying any drug or alcohol related offenses, and also denied illegal use of drugs or having participated in drug rehabilitation programs. Applicant also made false statements to a clearance investigator regarding her home address and arrests and convictions. Applicant admitted the allegations of deliberate falsification.

Applicant called two character witnesses, one of whom was her sponsor in AA. Her sponsor attested to her continued sobriety. She enjoys an excellent reputation for honesty, dependability, and hard work.

### **The Judge's Analysis**

The Judge noted Applicant's progress in rehabilitating herself from her addiction, but he stated that the duration of her criminal conduct and her deliberate falsifications precluded a favorable finding under Guideline J. Likewise, he concluded that her failure to disclose her drug use impaired her credibility concerning mitigation of the Guideline H allegations. The Judge found that none of the Guideline E mitigating conditions applied to Applicant's numerous falsifications.

### **Discussion**

Applicant cites to evidence of her sobriety for the five years preceding the hearing, arguing that she has shown rehabilitation. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has she shown that the Judge failed properly to weigh the evidence. *See, e.g.*, ISCR Case No. 14-00508 at 2 (App. Bd. Jan. 23, 2015). Applicant

states that she needs a clearance in order to keep her job. However, the Directive does not permit us to consider the adverse impact of an unfavorable decision. *Id.*

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 Y. Ra’anan  
Michael Y. Ra’anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board