

KEYWORD: Guideline F; Guideline E

DIGEST: From our review of the record, the Judge’s material findings regarding the falsification allegation are based on substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence. Adverse decision affirmed.

CASENO: 15-05344.a1

DATE: 12/6/2017

DATE: December 6, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-05344
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Tokay T. Hackett, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 16, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On August 17, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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 SOR alleged 23 delinquent debts. In his Answer to the SOR, Applicant claimed most of the alleged the debts were paid in full, some were part of a consolidated payment arrangement since 2013, and others were part of a consolidated payment arrangement since 2014.¹ Applicant did not provide documents to corroborate that any of the alleged debts were paid or were being paid through payment arrangements.

The SOR also alleged that Applicant falsified his response to a question on a security clearance application (SCA) in 2013 by failing to disclose that he had been arrested for sexual solicitation in 2011. Regarding this allegation, the Judge found:

Applicant was repeatedly given an opportunity to disclose to the investigator that he had been arrested. Each time he was asked the question, he denied he was arrested. When he was confronted with the arrest, he denied the incident ever happened. When he was again confronted with the arrest, he admitted it, but then follow[ed] up that he was not convicted. Applicant's repeated denials [go] to his intent when he completed his SCA. He went to court, completed 40 hours of community service, paid court cost and the charge was eventually dismissed. The instructions for completion of Section 22 [of the SCA] are clear and require disclosure of any information regardless of whether the case was sealed, expunged, or otherwise stricken. I have considered that he said he was told the incident was not part of his permanent record. However, there is ample evidence to support that he was attempting to keep this information from the government by interpreting the SCA so he would not have to disclose the arrest. This is supported by his repeatedly telling the government investigator that he was never arrested, the incident never happened, and he was never convicted. In addition, he indicated in his answer to the SOR, that he was aware of the incident and aware the misdemeanor charge was dismissed, but he believed it would not be placed or searchable on his permanent record. I find Applicant deliberately failed to disclose his 2011 arrest.²

In the appeal brief, Applicant challenges the Judge's findings of fact regarding the falsification allegation. In doing so, he makes reference a "Deferred Prosecution Agreement" and to a statute and court case involved in sealing the police record of Applicant's arrest for sexual solicitation. Such information was not previously provided to the Judge for her consideration and constitutes new evidence that the Appeal Board cannot consider. Directive E3.1.29. Furthermore,

¹ The Judge found that credit reports in Department Counsel's File of Relevant Material (FORM) established the alleged debts. The FORM noted the absence of evidence of Applicant's efforts to satisfy the debts. On September 8, 2016, Applicant was provided a copy of the FORM and given 30 days to file any objection or to submit additional matters. He did not submit a response to the FORM.

² Decision at 5.

given the plain language of the question in the SCA, even if the new evidence had been timely proffered, it is very unlikely that it would have altered the Judge's findings. From our review of the record, the Judge's material findings regarding the falsification allegation are based on substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence. Applicant has cited to no harmful error in the Judge's findings. ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant cites to evidence that he argues is favorable to him, including statements in the interview summary to the effect that "there is nothing in [his] background or lifestyle that could be used against him for blackmail or coercion, to include his arrest . . ." Appeal Brief at 11. However, these comments summarize Applicant's answers to the interviewer's question. They do not constitute the interviewer's considered opinion as to Applicant's worthiness for a clearance. In any event, even if an investigator provided such an opinion, it would not bind the DoD in its evaluation of an applicant's case. *See, e.g.*, ISCR Case No. 14-03069 at 3 (App. Bd. Jul. 30, 2015).

The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. Specifically, he argues the Judge did not examine relevant evidence and misweighed the evidence. His arguments, however, are neither sufficient to rebut the presumption that the Judge considered all of the evidence nor enough to establish that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 16-00844 at 2 (App. Bd. Jul. 25, 2017).

Applicant has not identified any harmful error in the Judge's decision. The Judge examined the relevant evidence 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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board