

Applicant's circumstances raised security concerns and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guidelines M and E are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has been employed by a Defense contractor since 2014 and has held a clearance since 1996. Her SOR alleges four security infractions. In 2011, she failed to secure a COMSEC safe, for which she was admonished. In 2012 she failed to secure a COMSEC vault door, though no action was taken. Later that same year she had two incidents in which encryptors were keyed to the wrong classification, resulting in her receiving a written reprimand. In 2013, Applicant left three unsecure SECRET/SAR labels in her unlocked overhead bin for about six weeks in a non-classified work area. Security officials could not rule out a compromise, and Applicant received a written disciplinary form and a ten-day suspension without pay.

The Judge's Analysis

The Judge concluded that Applicant's infractions raised security concerns. He further concluded that none of the Guideline K mitigating conditions were applicable, citing to evidence that the most recent incident occurred three years previous and that the classified labels may have been compromised. In the whole-person analysis, the Judge noted Applicant's work history and the respect she enjoys from her colleagues. However, he stated that he was left with "questions and doubts" about Applicant's eligibility for a clearance.

Discussion

Applicant notes language in the Directive that the various disqualifying conditions listed under Guideline K "could" raise concerns and be disqualifying. Appeal Brief at 7; Directive, Encl. 2, App. A ¶ 34. She argues that the Judge provided no analysis on this matter, which suggests that he misinterpreted the Directive to mandate the denial of a clearance in her case.

In fact, the analysis portion of the decision correctly states that the disqualifying conditions listed in the Directive *could*, rather than *must*, raise concerns. Although the Judge's analysis is admittedly conclusory, we find no support for Applicant's contention that the Judge found the disqualifying conditions to be applicable as a matter of law or that he otherwise believed that he had no discretion regarding their application. The Directive presumes a nexus between admitted or proved circumstances under any of the Guidelines and an applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 15-02903 at 2 (App. Bd. Mar. 9, 2017). Given that Applicant admitted the Guideline K allegations with explanations and that the record contains substantial evidence of the allegations as well, we find no reason to disturb the Judge's conclusion that Applicant's numerous security infractions raise concerns about her judgment and reliability.¹

¹To the extent that Applicant's argument implies a contention that the Judge entered the hearing with an inflexible predisposition to issue an adverse decision, we find no support for this in the record. Applicant has not rebutted the presumption that the Judge was impartial. *See, e.g.*, ISCR Case No. 12-10122 at 3 (App. Bd. Apr. 22, 2016).

Applicant contends that the Judge provided no analysis regarding her case for mitigation. She also contends that the Judge appears not to have performed a whole-person analysis. As with his treatment of the disqualifying conditions, the Judge's mitigation analysis is concise. However, the Directive requires a Judge to set forth findings, policies, and conclusions as to the allegations in the SOR but does not prescribe a quantum of analysis. Directive ¶ E3.1.25. Each case must be decided on its own merits, and we conclude that in this case the Judge has satisfied the requirements of the Directive.

Applicant cites to favorable evidence, such as her character references, performance reviews, professional accolades, etc. She argues that this evidence should have played a large part in the Judge's analysis but that he does not mention it.

A Judge is not expected to make findings about every piece of evidence in the record, which would be a practical impossibility. *See, e.g.*, ISCR Case No. 14-05396 at 4 (App. Bd. Jan. 10, 2017). In this case, the Judge's findings capture the essential facts underlying the SOR allegations, and he made reference to her good work record in the analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has she shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-08711 at 3 (App. Bd. Aug. 24, 2017).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. The decision is sustainable on this record. Once it is established that an applicant has committed security violations, he or she has a "very heavy burden" of persuasion as to mitigation. Such violations "strike at the heart of the industrial security program." ISCR Case No. 15-04340 at 3 (App. Bd. Jan. 30, 2017). "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