

KEYWORD: Guideline E

DIGEST: From our review of the record, the Judge’s conclusion that Applicant intentionally falsified his SCA is based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Adverse decision affirmed.

CASENO: 15-07277.a1

DATE: 04/26/2017

DATE: April 26, 2017

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 15-07277
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 22, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 1, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley 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 was terminated from a job for insubordination in 2010 and from another job for unsatisfactory performance in 2013. In 2014, he completed a security clearance application (SCA) and answered "no" to the questions that asked if he had ever been fired from a job, quit after being told he would be fired, left by mutual agreement following charges or allegations of misconduct, or left by mutual agreement following notice of unsatisfactory performance. He admitted to failing intentionally to disclose his involuntary separations out of embarrassment and concern his disclosures could adversely affect his future employment. In 2014, he was interviewed twice by an Office of Personnel Management agent and declined to disclose voluntarily his employment terminations.

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

Applicant's multiple omissions in his SCA and ensuing interviews about his employment history reflect recurrent acts of falsification that cannot be reconciled with actions indicative of mistake or misunderstanding. Considering all of the circumstances, his multiple omissions reflect knowing and wilful misconduct that raise security concerns under Guideline E.

### **Discussion**

Applicant contends the Judge erred in concluding that Applicant "intentionally" failed to disclose the involuntary terminations on his SCA. He claims he "admitted to making a mistake when completing his [SCA], and admitted to being sorry for this, however, he never used the words intentionally, that was something added by [the Judge]." Appeal Brief at 5-6. This contention lacks merit. First, Applicant admitted in his SOR response that he deliberately failed to disclose the involuntary terminations on his 2014 SCA. Second, Applicant's argument that he just "admitted to making a mistake" is taken out of context. The hearing transcript reflects the following exchange:

[Applicant's Counsel]: Why did you falsify your [SCA] answers as to these two terminations?

[Applicant]: That is really -- and I'm really sorry about this, because I made a mistake, and I do admit to making a mistake. First, I made the mistake, because I thought it might be a reason not to give me the clearance so I can get the job, and basically, I feel foolish that I did something like that, but it happens and I cannot take it away.<sup>1</sup>

Applicant's response – providing false SCA answers to obtain a security clearance and a job –

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<sup>1</sup> Tr. at 94-95.

supports the Judge's conclusion of an intentional falsification. Third, his testimony that he did not disclose the terminations because he felt embarrassed about them is further evidence of an intent to falsify. Tr. at 101, 110, 112. Fourth, Applicant also denied the terminations during two background interviews. Tr. at 111-112. From our review of the record, the Judge's conclusion that Applicant intentionally falsified his SCA is based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant argues that the Judge did not consider all of the evidence. For example, he argues the Judge failed to consider the number of years of his service to the Government and the military without any security incidents. Such arguments, however, are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-04856 at 2-3 (App. Bd. Mar. 9, 2017). We give due consideration to the Hearing Office case that Applicant has cited, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015). Additionally, we find no basis for concluding the Judge erred in his whole-person analysis.

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, 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'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