

KEYWORD: Guideline M; Guideline E

DIGEST: Applicant challenges the Judge’s conclusion that he intentionally falsified his responses to the SCA questions. He argues that his SCA omissions were out of character and not something that he would knowingly or deliberately do. We do not find Applicant’s argument persuasive. Adverse decision affirmed.

CASENO: 15-08162.a1

DATE: 11/3/2017

DATE: November 3, 2017

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In Re:)	
)	
-----)	ISCR Case No. 15-08162
)	
Applicant for Security Clearance)	
)	

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 July 2, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline M (Use of Information Technology) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 14, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran 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. The Judge’s favorable findings under Guideline M are not

at issue in this appeal. Consistent with the following, we affirm.

In responding to the SOR, Applicant admitted that he misused a company computer in 2013 by circumventing filtering and firewall systems to view pornographic websites and that he received a one-week suspension for violating the company's information technology (IT) system policy. On the occasion in question, he used a flash drive with a private browser believing he would bypass the company's firewall and prevent the company from discovering his actions. While he was permitted to use the flash drive in the company computer, he was not permitted to use the private browser.

In completing a security clearance application (SCA) in 2014, Applicant responded "No" to questions that asked whether he had been suspended or disciplined for misconduct in the workplace in the last seven years or whether he used hardware, software, or media in connection with any IT system without authorization in the last seven years when specifically prohibited by rules, procedures, guidelines, or regulations. During a background interview in 2015, Applicant confirmed his negative response to the SCA question pertaining to any suspension or disciplinary action until he was confronted with his one-week suspension. He indicated that he could not recall why he answered "No" to that question, that it was an oversight, and that he may not have read the question correctly. He denied falsifying his SCA and testified that he "rubberstamped" it by simply copying information from his previous SCA without closely reading the questions. Decision at 3. The Judge did not find Applicant's testimony credible. After considering Applicant's age, education, experience, character evidence, and the clear wording of the questions, the Judge concluded that Applicant intentionally falsified his responses to the two SCA questions.

In his appeal brief, Applicant challenges the Judge's conclusion that he intentionally falsified his responses to the SCA questions. He argues that his SCA omissions were out of character and not something that he would knowingly or deliberately do. We do not find Applicant's argument persuasive. First, the Appeal Board gives deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. Second, Applicant has not asserted that the Judge made any errors in his specific findings of fact regarding the falsification allegations. We conclude the Judge's conclusion that Applicant intentionally falsified his SCA responses is supported by substantial evidence. *See, e.g.,* ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant also contends that the Judge did not weigh and consider all relevant evidence. In doing so, he points to his character and other favorable evidence. His arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough 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. 14-03747 at 3 (App. Bd. Nov. 13, 2015). 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. *Id.* Additionally, the Judge complied with the requirements of the Directive in his whole-persons analysis by considering the totality of the evidence in reaching his 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