

KEYWORD: Guideline B; Guideline E

DIGEST: The Judge found Applicant tested positive for illegal drug use while possessing a security clearance in 2012, intentionally lied about details of an arrest during a background interview in 2011, and falsified responses to questions in two SCAs in 2011. Adverse decision affirmed.

CASENO: 15-08246.a1

DATE: 11/16/2017

DATE: November 16, 2017

In Re:)	
-----)	
Applicant for Security Clearance)	ISCR Case No. 15-08246

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Shane C. Brengle, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 16, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 29, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Erin C. Hogan 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 B are not

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

The Judge found against Applicant on allegations that he tested positive for illegal drug use while possessing a security clearance in 2012; that he intentionally lied about details of an arrest during a background interview in 2011; that he falsified responses to four questions in a security clearance application (SCA) in 2013; and that he falsified responses to questions in two SCAs in 2011. Applicant does not challenge any of the Judge's findings of fact. Instead, he claims the Judge erred in her mitigation and whole-person analysis.

In his appeal brief, Applicant contends that his misconduct occurred four to six years ago when he was 21 years old or younger and that he fully disclosed all pertinent information in a more recent SCA. He also argues some of his misconduct occurred under unique circumstances that are unlikely to recur. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 16-00276 at 5 (App. Bd. Oct. 30, 2017). In this regard, we note the Judge discussed Applicant's more recent SCA submission in her mitigation analysis and concluded that "Applicant's admissions and disclosures do not fully mitigate his past conduct to include deliberate falsifications." Decision at 12.

Applicant also contends that the Judge erred in failing to examine mitigating condition 17(g) because he no longer associated with the individual who provided him a cigarette that was laced with an unknown drug (Appeal Brief at 7-8) and the Judge erred in failing to address various whole-person factors. A Judge is not required to discuss all the analytical factors that could potentially apply in a case. *See, e.g.*, ISCR Case No. 14-06135 at 2, n. 1 (App. Bd. Jun. 15, 2016). In this case, the Judge considered the totality of the evidence in reaching her decision. We find no error in her mitigation and 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, 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: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board