

KEYWORD: Guideline E

DIGEST: Applicant argues that the Judge did not consider all of the evidence. Applicant’s arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. Neither are they enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 12-09886.a1

DATE: 05/08/2017

DATE: May 8, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 12-09886
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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 May 12, 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 22, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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 has a history of using questionable judgment on the job, although Applicant attributes that history to the stress of working in a male-dominated field. She contended that she was harassed and bullied while at work.

The SOR alleges several instances of misconduct or job termination. In 2009, Applicant received a written warning due to a confrontation with another worker. The next year her employer fired her for making slanderous remarks about a co-worker's anatomy. Applicant attempted to complain to the EEOC, but it did not take the case.

In early 2014, Applicant was terminated from another job for violating company regulations and, a couple of months later, was disciplined by a follow-on employer due to a confrontation at work. The following year Applicant was fired from a job with yet another employer, though she claimed she was never told why.

Applicant's character evidence states that she has excellent job skills and that she is honest, dependable, and a good leader. She is recommended for a clearance.

The Judge's Analysis

The Judge noted Applicant's evidence that she is often the only female in the workplace, which can present a difficult situation. However, the Judge concluded that Applicant's problems were of her own making, given the number of warnings and terminations that she has experienced. Indeed, Applicant acknowledged during her clearance interview that she can become emotional while at work, though she denied that she let her emotions get out of hand. The Judge stated that Applicant provided no evidence to show that the job terminations and other adverse actions were unjust. She stated that it is highly unlikely that a person would be fired from three different jobs by three different employers without having done anything wrong. The Judge concluded that Applicant's case impugned her judgment, trustworthiness, and reliability.

Discussion

Applicant argues that the Judge did not consider all of the evidence, such as her character references, etc. She cites to the Judge's acknowledgment that being the only female in a male-dominated workplace can cause difficulties. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. Neither are they 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. 13-00502 at 3 (App. Bd. Mar. 7, 2017). Applicant cites to a Hearing Office case that she believes supports her effort to gain a clearance. We give this case due consideration as persuasive authority. However, each case must be decided on its own merits. Moreover, Hearing Office cases are binding neither on other Hearing Office Judges nor on the

Appeal Board. *See, e.g.*, ISCR Case No. 15-01416 at 3 (App. Bd. Nov. Feb. 15, 2017).

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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board