

Applicant raised the following issues on appeal: whether the Judge erred in finding that his omission from his security clearance application (SCA) was deliberate and whether the Judge failed to make findings or provide analysis for one of the allegations in the SOR. The Judge's favorable findings under Guideline F are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

The Judge made the following findings pertinent to the issues raised on appeal: In March 2009, Applicant was arrested for DUI. The following year, he was found guilty and sentenced to one year of supervised probation, 60 days confinement (suspended), and attendance at a substance abuse class, among other things. After completion of Applicant's probation, the court issued a Judgement of Dismissal setting aside the conviction, which had the same effect as an acquittal.

When he completed his SCA, Applicant failed to disclose his arrest for DUI. During his clearance interview, he initially claimed that he had not been arrested, convicted, or sentenced within the previous seven years. When confronted with his DUI, he stated that he did not list it on his SCA or during the early part of the interview because he did not have all the details regarding the offense.

The Judge's Analysis

The Judge entered favorable findings under the Guideline F allegations. Concerning Applicant's failure to have disclosed his DUI arrest, the Judge stated that the omission was deliberate. He concluded that none of the mitigating conditions were entitled to full application, stating that Applicant made no attempt to correct the error before being confronted with the facts. In the whole-person analysis, the Judge cited to evidence that Applicant meets or exceeds his performance goals at work, that he served in the military, and that he has a reputation for being a hard worker. However, he concluded that the record did not support a favorable conclusion regarding the DUI omission.

Discussion

Applicant claims that the Judge erred in finding that his omission was deliberate. He argues that he believed that the dismissal and expungement of his case excused his failure to report. When evaluating the deliberate nature of an applicant's omissions or false statements, a Judge should consider the applicant's *mens rea* in light of the entirety of the record evidence. *See, e.g.*, ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015).

The SCA prefaced the question at issue with a warning that arrests and convictions must be disclosed even if the conviction had been dismissed or expunged. Government Exhibit 1, SCA, at 35. This language was clear and prominently displayed, thereby diminishing the likelihood that it might be overlooked. Moreover, in his interview, Applicant relied on his contention that he did not have enough information about the offense rather than expungement, which was not consistent with his claim on appeal. It was well within the Judge's discretion to find Applicant's explanation to be lacking in credibility. We give deference to a Judge's credibility determination. Directive ¶ E3.1.32.1. Given the clarity of the question and the inconsistencies in Applicant's explanations, we conclude that the challenged finding is supportable.

Applicant contends that the Judge made no findings and provided no analysis for one of the SOR allegations. This allegation, ¶ 2c, stated that Applicant had failed to disclose that his alcohol use had resulted in police intervention and that he had been required to complete a substance abuse program. We agree that the Judge did not make a finding about Applicant's alleged failure to have disclosed police intervention. He did make a finding about Applicant's substance abuse course, although he appears to have concluded that Applicant's omission of this matter was not objectively false. He did not discuss either of these matters in the Analysis portion of the Decision. Accordingly, the Judge's findings and analysis regarding the allegation at ¶ 2c do not support his ultimate adverse conclusion for this allegation. However, because the overall decision is independently sustainable based on the DUI omission, we conclude that this error is harmless. *See, e.g.,* ISCR Case No. 15-00535 at 3 (App. Bd. Mar. 13, 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: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board