

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge’s material findings, viewed as a whole, are based upon substantial evidence or constitute reasonable conclusions that could be drawn from the evidence. Applicant has cited to no harmful error in the Judge’s decision. Adverse decision affirmed.

CASE NO: 15-01789.a1

DATE: 01/24/2017

DATE: January 24, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-01789
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Andrew G. Dualan, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 29, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On October 13, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul

J. Mason denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge's findings of fact contained errors, whether the Judge failed to consider all of the evidence in the record, and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. 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: Applicant resigned from a job at the end of 2011 because she had provided her employer with false grade reports in order to obtain tuition reimbursement. She was 32 years old at the time. The misconduct came to light when the employer requested a transcript to validate Applicant's grades. After conducting an internal audit, the employer sought confirmation of Applicant's grades from the university. The university replied that the grades claimed on the transcript that Applicant had submitted could not be verified. On December 14, 2011, Applicant stated that she would take responsibility for the amount owed. The next day "she submitted an online grade report that disclosed additional discrepancies between the grades reported and the online grade report she submitted." Decision at 4. Applicant did not provide documentation to support her claim to have paid the \$7,140 that she owed. However, this debt does not appear on her credit reports.

The Judge's Analysis

The Judge cleared Applicant of the Guideline F allegations. However, he entered adverse findings under the sole Guideline E allegation, the false grade report. The Judge stated that Applicant had not disclosed her misconduct until she had been confronted by her employer. Though noting the elapse of several years since this incident, the Judge stated that Applicant had submitted misleading information twice—once on December 9 and another a few days later. He stated that evidence of Applicant's financial troubles did not extenuate her fraudulent conduct.

Discussion

Applicant's brief includes references to matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. Applicant challenges the Judge's finding that she had submitted false information twice. She argues that the evidence upon which this finding is based misinterpreted her conduct.

Even if the challenged finding is erroneous, it did not likely affect the outcome of the case. In explaining his adverse decision, the Judge cited to evidence that Applicant did not disclose her misconduct until after she learned of an audit that would likely have uncovered it anyway. Therefore, even if he had found only one submission of false information, the Judge would likely have reached the same ultimate conclusions. The Judge's material findings, viewed as a whole, are based upon substantial evidence or constitute reasonable conclusions that could be drawn from the evidence. Applicant has cited to no harmful error in the Judge's decision. *See, e.g.*, ISCR Case No. 15-01285 at 3 (App. Bd. Dec. 22, 2016).

Applicant cites to evidence that she has never been denied a clearance and that her security record is clean. She also cites to her response to the FORM, which includes email correspondence with her previous employer. She argues that, but for this correspondence, her misconduct might not have come to the attention of her current security officials until much later.¹ Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-02854 at 2 (App. Bd. Nov. 22, 2016). Neither has she demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

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.”

¹Applicant also contends that the Judge did not consider evidence that she held a clearance, including Top Secret, for years following her resignation in 2011. She argues that she was able to maintain her clearance even though many security officials knew of her misconduct. The record is not clear on this point. Applicant advised in her clearance interview that, after her resignation, she no longer had a clearance due to loss of jurisdiction. Clearance Interview Summary, dated September 2012, at 3, included in Item 4, Answers to Interrogatories. It appears that the security clearance application (SCA) that is the basis for the current adjudication was signed in 2009, the clearance interview occurring in late 2012. Decision at 1-2; Item 3, SCA, dated March 24, 2009; Clearance Interview Summary at 1. Accordingly, Applicant’s security-significant conduct may well have occurred during the pendency of her clearance investigation. There is no evidence in the record that unequivocally demonstrates that officials with knowledge of Applicant’s misconduct granted her a clearance after 2009 but prior to the date of the SOR, although Applicant’s FORM response includes an email from an official (who does not appear to be a security official) stating that her “clearance is fine for the Secret level.” Even if Applicant’s assertions are correct, however, the Government is not estopped from making an adverse clearance decision despite prior favorable adjudications. *See, e.g.*, ISCR Case No. 14-02995 at 2-3 (App. Bd. Apr. 7, 2016).

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan

Michael Y. 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