

KEYWORD: Guideline K

DIGEST: Considering the Judge’s unchallenged findings that Applicant committed six security infractions over a more than two-year period and that Applicant did not corroborate his claim to have a medical basis for his misconduct, we find no reason to disturb the Judge’s conclusion that Applicant had not met his heavy burden of persuasion. Adverse decision affirmed.

CASE NO: 15-04340.a1

DATE: 01/30/2017

DATE: January 30, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-04340
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 2, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline K (Handling Protected Information) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On November 8, 2016, after considering the record, 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 issues on appeal: whether the Judge's findings of fact contained errors, and 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 been employed since 1995 and has held a clearance since 2007. Between early 2012 and mid 2015 Applicant committed six separate security infractions by failing properly to secure closed areas within his place of employment. After each occasion appropriate authorities counseled him, with written reprimands, retraining, checklists, etc. Applicant attributed his infractions to inattention due to grief over his parents' illnesses and deaths. He met with a psychologist, who in turn referred him to a neurologist. His physician also suggested that Applicant suffered from attention deficit disorder and a sleep problem. The record contains no evidence of a conclusive diagnosis.

Applicant's character references confirm that he had experienced difficulties resulting from his parents' final illnesses and that he has demonstrated positive change since their deaths. According to his references, Applicant has shown improvement in compliance with security policy and that he can be trusted with classified information.

The Judge's Analysis

The Judge noted that Applicant had committed security violations on six separate occasions, concluding that he had not presented an acceptable excuse for his misconduct. She stated that the number of his infractions raise doubt about his trustworthiness, reliability, and judgment, constituting a pattern that may likely recur. She concluded that none of the Guideline K mitigating conditions were entitled to favorable application.

Discussion

Applicant challenges some of the Judge's findings of fact and has identified some errors. For example, he correctly notes that he has held a clearance since the mid-1990s rather than 2007 as the Judge found. Item 4, Security Clearance Application, at 22. He also identifies a typographical error in her summarization of one of the character references, the word "cant" which contextually clearly should read "can."

Applicant identifies another error, this time in the whole-person analysis. The Judge stated that Applicant's security infractions "support a whole-person assessment of poor judgement, untrustworthiness, unreliability, *a lack of candor*, and unwillingness to comply with rules and regulations[.]" Decision at 6-7. (Emphasis added) As Applicant contends, there is no evidence in the record to show a lack of candor. Indeed, the record includes copies of written reprimands that Applicant received from his employer. Though noting the seriousness of his infractions, several of them explicitly commend Applicant for his candor in admitting his misconduct and for his

acceptance of responsibility. The Judge cited to nothing in the record to support a conclusion that Applicant was untruthful or that he had been less than candid. Although we give deference to a Judge's credibility determinations (Directive ¶ E3.1.32.1), in the case before us we conclude that this statement by the Judge is unsupported by the record and is not sustainable.

Applicant cites to evidence that he has not had a recurrence of his misconduct since mid-2015. He also argues that his claims about a medical basis for his misconduct are well founded and not merely speculative, as the Judge stated. He contends that the Judge should have evaluated his conduct in light of his having held a clearance since the mid-1990s rather than 2007, thereby underscoring what he views as the unusual nature of his infractions.

Applicant's arguments amount simply to a disagreement with the Judge's weighing of the evidence, which is not enough to show error. Once it is established that an applicant has committed security violations, he or she has a "very heavy burden" of persuasion as to mitigation. Such violations "strike at the heart of the industrial security program." Accordingly, a Judge must give any claims of reform or rehabilitation "strict scrutiny." ISCR Case No. 11-09219 at 3 (App. Bd. Mar. 31, 2014).

Considering the Judge's unchallenged findings that Applicant committed six security infractions over a more than two-year period and that Applicant did not corroborate his claim to have a medical basis for his misconduct, we find no reason to disturb the Judge's conclusion that Applicant had not met his heavy burden of persuasion. Given the seriousness of Applicant's security-significant conduct, we conclude that the Judge would have made the same ultimate decision even if she had not made the errors outlined above. Therefore, there is no reason to remand the case for the Judge to correct them.

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 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