

KEYWORD: Guideline E; Guideline K

DIGEST: Guideline K is not limited to violations of DoD rules and polices, but also encompasses violations of industry rules and policies established for the protection of classified and sensitive information. Adverse decision affirmed.

CASENO: 15-08002.a1

DATE: 07/17/2018

DATE: July 17, 2018

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| In Re: |) | |
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| ----- |) | ISCR Case No. 15-08002 |
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| Applicant for Security Clearance |) | |
| |) | |

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 May 16, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline K (Handling Protected Information) 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 March 26, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Eric H. Borgstrom 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant is a 56-year-old employee of a defense contractor. He admitted that he has been involved in seven security incidents.¹ These include him receiving written notice of security violations or infractions for failing to secure safes and other protections and for admitting an unapproved foreign national into a unclassified meeting. He disclosed these incidents on his security clearance application. No evidence of compromise of sensitive information arose from these incidents. Applicant attributed the incidents to being unable to concentrate on his security duties while performing supervisory duties. In 2014, he voluntarily resigned from that supervisory role. Applicant’s Facility Security Officer supports him, holds him in high regard, and notes that he has not had any security incidents since early 2016.

The Judge’s Analysis

Applicant’s security incidents were not deliberate but persisted despite repeated counseling. The first six security violations occurred over a three-year period. He committed another security violation after stepping down from his supervisory role. While he demonstrated candor in reporting the incidents, the repeated nature of the incidents following counseling casts doubt on his reliability and ability to safeguard protected information. He has not met his “very heavy burden” to mitigate the security concerns arising from his pattern of security violations. Decision at 5 and 6, citing ISCR Case No. 11-09219 at 3 (App. Bd. Mar. 31, 2014).

Discussion

In his appeal brief, Applicant notes that the incident involving the admittance of a foreign national into an unclassified meeting was “a violation of [his company’s] policy.” Appeal Brief at 1. He argues that incident was not a violation of DoD policy or the “Industrial Security Program” and should not have been considered by the Judge. *Id.* However, Guideline K is not limited to

¹ Only six of the incidents were alleged in the SOR under Guideline K. Those six incidents were also cross-alleged in a single Guideline E allegation.

violations of DoD rules and polices, but also encompasses violations of industry rules and policies established for the protection of classified and sensitive information. *See, e.g.*, ISCR Case No. 14-00963 at 3 (App. Bd. Jan. 13, 2015) (affirming an unfavorable clearance decision in which an applicant's mishandling of a company's proprietary information was alleged under Guideline K).

Applicant also argues the SOR allegation involving the foreign national is misleading because it does not portray the incident as involving a meeting between representatives from his company and a vendor. We do not find this argument persuasive. The company submitted a Joint Personnel Adjudication System (JPAS) entry reporting that Applicant's admittance of the foreign national into its facility raised Guideline K security concerns because such conduct violated its rules on foreign national visitors and access control. As we have previously noted, we give deference to a company's findings and conclusions in its security investigations. *See, e.g.*, ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018) (“[B]ecause of the unique position of employers as actual administrators of classified programs and the degree of knowledge possessed by them in any particular case, their determinations and characterizations regarding security violations are entitled to considerable deference, and should not be discounted or contradicted without a cogent explanation.”). Applicant has not established any convincing reason for concluding the Judge erred in his findings or conclusions regarding the allegation in question.

The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. In those arguments, he cites to such matters as his honesty and integrity in disclosing his security incidents and the length of time that has passed since his last incident. These arguments, however, are not sufficient 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. 14-06440 at 4 (App. Bd. Jan. 8, 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, 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: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Charles C. Hale

Charles C. Hale
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board