

KEYWORD: Guideline E

DIGEST: Applicant’s deliberate misrepresentation of his academic record, especially in clearance applications and subsequent interviews, supports the Judge’s adverse decision. In fact, Applicant admitted during his testimony that completion of a degree would not mitigate concerns arising from his falsifications. We find no reason to disturb the Judge’s adverse conclusions. Adverse decision affirmed.

CASENO: 15-07438.a1

DATE: 03/16/2018

DATE: March 16, 2018

In Re:	)	
	)	
-----	)	ISCR Case No. 15-07438
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Gregory F. Greiner, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 23, 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 November 30, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Nichole L. Noel 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 failed properly to apply the mitigating conditions. Consistent with the following, we affirm.

### **Judge’s Findings of Fact and Analysis**

Applicant first received a security clearance in 2013. He has worked for his current employer since October 2015. Though he attended college, he did not complete all of the requirements for an academic degree. He did, however, participate in his college’s 2010 commencement service. Realizing that the lack of a degree hampered his job search, he listed a bachelor’s degree on his resume. He has applied for and obtained three positions in addition to his current one by using false education credentials. Moreover, he completed questionnaires for clearance investigations in 2012, 2013, and 2015. On each one, he stated that he had received a college degree in 2010. He made similar statements to clearance investigators in 2012 and again in 2015. Finally, in a follow-up interview in August 2015, he admitted his falsifications. As of the hearing, Applicant had not admitted his misconduct to his employer or to family members. Applicant returned to school in early 2017 and is expected to complete his degree requirements.

The Judge noted that Applicant admitted his misconduct only after being confronted with it by a clearance investigator. She stated that Applicant’s failure to provide truthful information during the clearance process provides a reason to deny him a clearance. She stated that Applicant repeated his misconduct several times and cited to evidence that he still had not disclosed his misconduct to his employer as of the close of the record.

### **Discussion**

Applicant contends that he has demonstrated mitigation, stating that he has now completed his degree and, therefore, will not be in a position to re-engage in the conduct at issue in this case. Actual completion of the degree is new evidence, which we cannot consider. Directive ¶ E3.1.29. However, Applicant testified that he expected to complete the degree a couple of weeks after the hearing. Tr. at 42. To the extent that he is arguing that the Judge failed to consider this testimony, he has not rebutted the presumption that the Judge considered all of the evidence, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-00257 at 3 (App. Bd. Dec. 7, 2017). Applicant’s deliberate misrepresentation of his academic record, especially in clearance applications and subsequent

interviews, supports the Judge’s adverse decision. In fact, Applicant admitted during his testimony that completion of a degree would not mitigate concerns arising from his falsifications. Tr. at 42.<sup>1</sup> We find no reason to disturb the Judge’s adverse conclusions.

Applicant points out an error in the Judge’s Formal Findings. The SOR alleged five deliberate misrepresentations, designated SOR ¶¶ 1a-e. However, the Judge entered a Formal Finding only for ¶ 1a, which concerned the falsification in Applicant’s 2012 clearance application. She entered no other Formal Findings. A Judge should enter findings and conclusions on all of the allegations in the SOR. Directive ¶ E3.1.25. However, the Judge’s findings of fact and analysis addressed the entirety of the allegations contained in Applicant’s SOR, finding that he had engaged in all of the misconduct raised therein. Therefore, we conclude that the omission in her Formal Findings is simply an oversight. We find no reason to remand the case to the Judge, since corrective action would not change the overall outcome of the case.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. Refusal to provide truthful answers during the security clearance process “will normally result in an unfavorable national security eligibility determination. . . .” Directive, Encl. 2, App. A ¶¶ 15 and 15(b). Deliberate false statements to an employer can raise concerns about an applicant’s eligibility for access to classified information as well. *Id.* at ¶ 16(b). “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.”

---

<sup>1</sup> “[Judge]: So you are scheduled to finish your last class this month . . . do you think that will mitigate the initial falsification? [Applicant]: No, it won’t. I know I lied about it. . . .”

**Order**

The Decision is **AFFIRMED**.

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board

Signed: Charles C. Hale  
Charles C. Hale  
Administrative Judge  
Member, Appeal Board