

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 12, 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 August 10, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Caroline E. Heintzelman 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 erred in finding that he made false statements during the processing of his case 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 worked for his current employer since early 2018. He has held a clearance for about 30 years. He spent 10 years in the military, receiving an honorable discharge. During his service he received several medals and letters of commendation. Married three times, Applicant has two children and two stepchildren.

Applicant was arrested in 2005 for soliciting a prostitute through the internet. He claimed that he did so through immaturity and the influence of peer pressure. He met the purported prostitute at a hotel and rode on an elevator with her to a room. The prostitute was, in fact, an undercover police officer. After exiting the elevator, Applicant was arrested. He held a security clearance at the time. In a 2007 security clearance application (SCA), Applicant disclosed this offense. During the subsequent interview, he stated that it was a one-time event that would not recur.

In 2011, Applicant was arrested and charged with soliciting a prostitute. He pled no contest. He testified at the hearing that he met the woman in a public place. After discussing details of the transaction, the police arrested Applicant. He held a clearance at the time. Applicant stated that his 2005 and 2011 arrests were the only times that he had been involved in prostitution. His current employer is not aware of the things alleged in the SOR.

A year later, Applicant moved to another country for work. He engaged in an extra-marital affair in that country, which resulted in the birth of a daughter in 2015. Applicant’s wife was aware of the affair but did not learn of Applicant’s daughter until 2017, when she read the discovery documents pertaining to this case. Applicant had told his son about the daughter two years prior to his wife’s discovery, and he told his best friend. He did not indicate whether he had told anyone else, whether family, friends, or colleagues.

Applicant did not disclose his 2011 arrest on his current SCA due to a transmission error. He did tell his security manager. During a clearance interview in early 2016, Applicant voluntarily disclosed this arrest and stated that he had never solicited a prostitute before 2011 and that he would not do it again. In his Answer to the SOR, Applicant stated that he did not remember being asked

about solicitation prior to 2011. At the hearing, he testified that he did not completely read and review the 2016 interview before he adopted it.

Applicant's SOR Answer and his clearance interview differ substantially regarding the 2011 arrest. For example, he told the interviewer that he had discovered the purported prostitute through a website. In the Answer, he claimed that he had been referred to this person through a friend. At the hearing, he denied that he had made various inculpatory statements to the interviewer. The Judge stated that Applicant's inconsistent statements impugned his credibility. She also found that his explanations as to why he adopted the interview summary as accurate were not plausible.

The Judge's Analysis

The Judge stated that Applicant's two arrests while holding a security clearance demonstrated questionable judgment. She also noted evidence of his child from the extra-marital affair and that he had not been forthright during his 2016 clearance interview. She reiterated her finding that Applicant's various explanations and denials, which have been ongoing, lack credibility. She also stated that his failure to be forthcoming about his daughter shows questionable judgment and a lack of candor.

Discussion

Applicant contends that he did not lie during his clearance interview, pointing out the explanations that he made during the processing of his case and during the hearing. Given evidence that Applicant had certified the accuracy of the interview summary, the Judge was well within her discretion to find that the summary was a true account of the interview. Her findings that Applicant made statements at variance with the summary are supported by the record and support her adverse conclusions about Applicant's credibility. We are required to give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. *See* ISCR Case No. 16-01077 at 3 (App. Bd. Apr. 25, 2018). The Judge's finding that Applicant made material false statements in his clearance interview is supported by substantial record evidence. *See, e.g.*, ISCR Case No. 17-02145 at 3 (App. Bd. Sep. 10, 2018).

Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence, nor are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *Id.* Viewed in light of the record as a whole, Applicant's false statements, lack of candor, and solicitation of prostitutes while holding a security clearance support the Judge's adverse findings and conclusions. Among other considerations, refusal to provide full, frank, and truthful answers to questions posed during the course of security clearance processing "will normally result in an unfavorable . . . security clearance action." Directive, Encl. 2, App. A ¶ 15.

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge’s adverse 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: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board

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