KEYWORD: Guideline B; Guideline E

DIGEST: The Judge concluded that Applicant intentionally falsified his responses to two SCA questions. Overall, Applicant made three false statements about providing support to his family in Afghanistan, but also later made three truthful statements. The pertinent SCA question was clear and easy to understand. Adverse decision affirmed.

CASENO: 16-01645.a1

DATE: 03/19/2018

DATE: March 19, 2018

In Re: ---------------------------- Applicant for Security Clearance	))))))))	ISCR Case No. 16-01645

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 February 27, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision–security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 28, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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 adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline B are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

The Judge found against Applicant on two falsification allegations. In completing security clearance applications (SCA) in 2014 and 2016, Applicant responded "No" to the question that asked whether he ever provided financial support to a foreign national. However, he provided about $32,000 to his family living in Afghanistan from 1999 to 2010. He accepted responsibility for answering the SCA questions incorrectly, but noted that a "recruiter employed by the government contractor helping him answer the questions did not pay attention to the question." Decision at 4.

During a counter-intelligence interview in 2010, he indicated that he did not provide any significant assistance, gifts, cash, or other items of value to non-U.S. persons. In interviews in 2011, 2014, and 2016, he disclosed that he has provided money to family members in Afghanistan. "He explained the absence of the financial support information from his SCA was because 'HE was not aware HE had to disclose this information on HIS SF86.'" Decision at 5. He provided detailed responses to other SCA questions. He claimed that he did not intentionally falsify his responses on this SCAs and noted he revealed the financial support he provided to family members during counter-intelligence interviews.

Applicant has served with U.S. forces in Afghanistan under dangerous conditions. He provided certificates of appreciation that praised his contributions to U.S. military units.

The Judge's Analysis

The Judge concluded that Applicant intentionally falsified his responses to two SCA questions. Overall, Applicant made three false statements about providing support to his family in Afghanistan, but also later made three truthful statements. The pertinent SCA question was clear and easy to understand. He throughly addressed several questions in his SCAs, showing he read the SCA and took significant time to complete it. His payments to foreign family members were substantial enough that he should not have forgotten them. During his counter-intelligence interview

in 2014, he was questioned about omitting the financial support information on his 2014 SCA, which would have highlighted the issue for his next SCA, but he still failed to disclose that information on his 2016 SCA. His false statements were not isolated and were not mitigated under ¶ 17(a) of the adjudicative guidelines.[1]

Discussion

In his appeal brief, Applicant explains that his incorrect SCA responses were a mistake. He states that he was not familiar with the SCA process and relied on a recruiter who helped him fill out the forms. He claims that he told the recruiter that he sent money to his parents in the past, but the recruiter instructed he to mark "No" to the question to expedite the screening process.[2]

When he was asked why he omitted information from his SCAs about providing financial support to his foreign family members during his counter-intelligence interviews in 2014 and 2016, Applicant made no mention of the recruiter instructing him to answer the question incorrectly to expedite the screening process, but indicated that he was not aware he had to disclose that information. Additionally, his testimony at the hearing about the recruiter's involvement in the screening process was markedly different than his description in his appeal brief. During his testimony, he stated:

> [Applicant]: Like I said this was not intentional that I didn't provide, yes. I believe that I was not paying attention to that question and also it was a little bit my fault and also my recruiter as well because some of them like we provide the permission to recruiters and the recruiter goes through the SF-86 application.

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[1] Directive, Encl. 2, App. A ¶ 17(a) states, "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts[.]"

[2] In his brief, Applicant stated:

> Time and again I mentioned to the recruiter that I have sent money to my parent back home in the past 10 years, but the recruiter insisted that in order for my work to be expedited and that I can be deployed soon as possible, he instructed me to mark "NO" in those boxes; By no stretch of imagination did I mean to make any false reports.
>
> * * *
>
> The gentleman interviewing me had no prior knowledge of my financial support for my family and, despite of what the recruiter had instructed me to say, I made sure to be honest and straight forward during my CI interview. I am sure that like what happened with me, some of those recruiters may have similarly conducted themselves in unethical manners and misguiding and misleading new candidates when they (recruiters) are helping those candidates with filling out their SF86 forms. Often the errors surfacing at later point may not be the fault of the candidates but rather by being misled by the recruiter who is eager to quickly and expeditiously send the candidates to job sites overseas so that he/she can receive their commission.

Appeal Brief at 2-3.

* * *

> I don't know, for some reason I did not pay attention and also my recruiter, also he didn't pay attention to that question, too. So yes.
>
> And also, I did provide this information during my CI screening interview back in 2011, in 2014, as well as 2016.
>
> [Department Counsel]: Do you understand that you alone are responsible for the information that appears on your e-QIP, not your recruiter?
>
> [Applicant]: Well, that's true. But yes, I admit that I should -- the question, I don't know why I did not pay attention to that question or not or something like why did I miss? So that's my fault, I admit.[3]

We note that Applicant is stating for the first time on appeal that he informed the recruiter he provided financial support to his foreign family members in the past and the recruiter instructed him to respond "No" to the pertinent question to expedite the process. These representations constitute new evidence that Appeal Board cannot consider. Directive ¶ E3.1.29.

To the extent that Applicant is contending that his recruiter is responsible for his SCA omissions, we do not find that argument persuasive. As noted above, during his counter-intelligence interviews, he claimed he was not aware he had to disclose that information. In his Answer to the SOR, he admitted his responses were incorrect, but claimed those errors were not intentional. In his testimony, he attributed the omissions to him and his recruiter not paying attention to the question.[4] He first mentioned the recruiter's involvement during his testimony. The evolving nature of his explanation for the SCA omissions undermines the persuasiveness of his arguments. We note the Judge considered Applicant's SCA responses in light of the entire record. *See, e.g.*, ISCR Case No. 10-04821 at 4 (App. Bd. May 21, 2012). Based on our review of the record, the Board concludes that the Judge's material findings that Applicant falsified his responses to SCA questions are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

In his appeal brief, Applicant highlights as mitigating evidence his actions in supporting U.S. forces overseas and the reasons why he was providing financial support to his foreign family members. However, the presence of some mitigating evidence does not alone compel the Judge to

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[3] Tr. at 56-57.

[4] In the decision, the Judge did not discuss mitigating condition 17(b), which states, "the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully[.]" Given Applicant's testimony that he and the recruiter overlooked the question and did not provide him any advice about how to respond to it, we do not find any error in the Judge not addressing mitigating condition 17(b).

make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 15-08684 at 2 (App. Bd. Nov. 22, 2017).

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: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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