



Pamela C. Benson 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. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant, who is 54 years old, earned a bachelor's degree in 1986 and master's degrees in 1989 and 1997. He was employed by a Federal contractor from 2005 to early 2012 and by another Federal contractor since late 2012. In 2008, he received a letter of reprimand from his employer for overuse of the internet and for violating its information technology (IT) policy by visiting inappropriate adult-content links on a website. In 2011, he again accessed the inappropriate website on his work computer over a couple of weeks during working hours. After he was informed in early 2012 that his company was terminating him, he drafted a "pre-dated resignation letter" hoping the company would categorize his departure as a "resignation" or "resignation in lieu of termination" instead of a termination for cause. Decision at 3. In responding to the SOR, Applicant admitted that he was terminated from that employment in 2012 for accessing prohibited websites on a government computer.

Applicant denied that he falsified his December 2012 security clearance application (SCA) when he answered "No" to a question that asked if, within the last seven years, he received a letter of reprimand, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy. In his Answer to the SOR, Applicant claimed he responded in the negative to that question because he used his responses from his 2011 SCA to answer questions in his 2012 SCA. He also claimed the question asked for disclosure of violations of security policy in the workplace, and his misuse of the IT system was not a violation of security policy.

In his 2012 SCA, Applicant also responded "No" to the question that asked if he had ever been fired, quit after being told he would be fired, left by mutual agreement following charges or allegations of misconduct, or left by mutual agreement following notice of unsatisfactory performance. In the comment section of that question, he listed that he resigned while an investigation into his internet use was ongoing, and "[a]ny later decision by the employer on his exact exit status was not known by him." Decision at 3. Although Applicant's response to this question was not alleged under Guideline E, it was probative as to his state of mind when he completed his December 2012 SCA because his employer had told him that he was being terminated for his repeated IT misconduct in early 2012. At least one of the scenarios posed in the question fit his situation.

Applicant provided numerous character reference letters and work appraisals showing he is a valued, knowledgeable employee. The reference letters, however, did not indicate that the authors were aware of the SOR allegations.

## **The Judge's Analysis**

Applicant admitted the Guideline M allegations. He was reprimanded for his misuse of his former employer's IT system in 2008 and returned to such misuse in 2011. His repeated misconduct casts doubt on his reliability, trustworthiness, and good judgment.

Applicant claimed the SCA question in the falsification allegation only mandated reporting reprimands issued for violations of security policy. However, the phrase "such as" shows that reprimands for violation of security policy is merely an example of actions that must be reported. The pertinent question in the 2012 SCA is a combination of two questions from his 2011 SCA. "It is clear from the revised question that any misconduct, to include violations of security policy, were required to be disclosed." Decision at 6. His explanations for the omission were not credible. Sufficient evidence exists to establish that his omission of information from the SCA was intentional. His failure to be completely honest casts doubt on his reliability, trustworthiness, and good judgment.

The persuasive value of his character evidence is lessened because there is no indication the authors were aware of his alleged conduct. His favorable character evidence is not enough to overcome the security concerns arising from his repeated misuse of his employer's IT system and his failure to be candid on his SCA.

## **Discussion**

In his appeal brief, Applicant challenges the Judge's conclusion that he intentionally falsified his response to a question on his 2012 SCA. He argues that SCA omission was a misunderstanding and out of character for him as attested to by his character references. We do not find Applicant's argument persuasive. First, the Directive provides that we shall give deference to a Judge's credibility determination. Directive E3.1.32.1. We find no reason to disturb the Judge's credibility determination in this case. Second, Applicant has not asserted that the Judge made any errors in her specific findings of fact regarding the falsification allegation. In evaluating whether the Government has met its burden of production to show an omission was deliberate, the Judge must examine the omission in light of the record as a whole. *See, e.g.*, ISCR Case No. 07-16511 at 4 (App. Bd. Dec 4, 2009). In this case, the Judge concluded the SCA question made clear that Applicant had to disclose his letter of reprimand. She also considered that Applicant was a mature adult with three college degrees in discounting his claim that he misunderstood the SCA question. Additionally, the Judge also found probative that Applicant was less than candid in responding to another SCA question. *See, e.g.*, ISCR Case No. 10-03732 at 6 (App. Bd. Jun. 14, 2013) for the proposition that evidence of other, unalleged false statements is relevant in assessing whether an Applicant's SCA omission was deliberate or the result of an innocent mistake. Based on our review of the record, the Board concludes that the Judge's material finding that Applicant falsified his response to a SCA question is based on substantial evidence, or constitutes a reasonable characterization or inference that could be drawn from the record. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant also contends that the Judge did not weigh and consider all relevant evidence. In doing so, he points to his character and other favorable evidence. His arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough 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. 15-01717 at 3 (App. Bd. Jul. 3, 2017). We give due consideration to the Hearing Office case that Applicant has cited, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge’s decision. *Id.* Additionally, the Judge complied with the requirements of the Directive in her whole-persons analysis by considering the totality of the evidence in reaching her decision.

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