

KEYWORD: Guideline E; Guideline H; Guideline J

DIGEST: In completing a security clearance application (SCA) in 2014, Applicant failed to disclose all of his criminal offenses. In addition, he denied ever having been charged with a felony and ever having been charged with an alcohol-related offense. He also did not disclose his marijuana use. In 2016, Applicant completed another SCA. He did not disclose requested information about his illegal drug use. However, realizing the importance of candor, he submitted a new SCA in which he provided truthful information about his drug involvement. Adverse decision affirmed.

CASENO: 16-03466.a1

DATE: 11/19/2018

DATE: November 19, 2018

In Re:)	
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Applicant for Security Clearance)	ISCR Case No. 16-03466

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 15, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct), Guideline J (Criminal Conduct), and Guideline H (Drug Involvement and Substance Abuse) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On September 6, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason 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 is 32-years-old and has a child. He has an associate’s degree and is working on a bachelor’s degree as well as job-appropriate training certifications. Applicant has held a security clearance since 2015.

The SOR alleged, and the Judge found, that Applicant began using marijuana when he was a teenager. In 2002, he was charged as a juvenile with felony possession of marijuana with intent to distribute. Although he subsequently dissociated himself from “unsavory individuals,” he continued to use marijuana, though at a reduced level. Decision at 3. His last use was in 2014, and he has no future intentions of resuming the practice.

In addition to the possession offense described above, Applicant has been arrested and/or charged with several other criminal offenses, including illegal consumption while driving, reckless driving, obstruction of justice, drunk in public, and DUI. His last offense was a 2015 reckless driving charge. Applicant has been required to attend an outpatient treatment program and Alcoholics Anonymous meetings. He attributed his offenses to immaturity.

In completing a security clearance application (SCA) in 2014, Applicant failed to disclose all of his criminal offenses. In addition, he denied ever having been charged with a felony and ever having been charged with an alcohol-related offense. He also did not disclose his marijuana use. Despite these omissions, Applicant received a clearance.

In 2016, Applicant completed another SCA. He did not disclose requested information about his illegal drug use. However, realizing the importance of candor, he submitted a new SCA in which he provided truthful information about his drug involvement. He did not initially consider his falsifications “as being that important.” *Id.* at 5. He is remorseful for his omissions.

The Judge’s Analysis

The Judge cited to evidence that, despite his felony possession offense, Applicant continued using marijuana for another 12 years. He stated that Applicant presented differing explanations as

to why he eventually stopped using marijuana. He concluded that Applicant's lengthy history of drug, alcohol-related, and reckless driving offenses require a longer period of rehabilitation than the three years that had elapsed since his last infraction and the close of the record. Regarding Guideline E, the Judge found that Applicant's falsifications were deliberate. He stated that Applicant was attempting to conceal material information about his criminal record and drug history.

In the whole-person analysis, the Judge cited to Applicant's educational attainments and to his claims to have matured. On the other hand, he noted Applicant's criminal offenses, as well as his 12-year history of illegal drug use and his deliberately falsifying two SCAs. In addressing Applicant's criminal offenses, the Judge stated that the reckless driving charges demonstrated a pattern of disregard for the safety of others. Despite favorable record evidence, the Judge concluded that Applicant had not mitigated the concerns arising from his security-significant conduct.

Discussion

Applicant's appeal brief includes a substantial amount of information from outside the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant cites to record evidence that he is the father of a child (which he asserts has helped him mature and become responsible), that he has disassociated from people who were bad influences, that he is pursuing educational goals, and that he has foresworn the sort of conduct underlying his charges and convictions. He also acknowledges his false statements but notes that he did submit a corrected SCA in which he disclosed all of his drug and criminal history. Applicant's arguments are not enough to demonstrate, however, that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 17-02463 at 2 (App. Bd. Sep. 10, 2018).

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

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

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