

KEYWORD: Guideline E

DIGEST: Applicant argues that the Judge did not properly weigh and consider all relevant evidence. In making those arguments, he cites to such matters as the amount of time that has passed since the conduct in question, his character evidence, his excellent work performance, and his sworn statement of intent. We note the Judge made findings about those matters. Applicant's arguments are neither sufficient to rebut the presumption that the Judge considered all of the record evidence nor enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 16-03500.a1

DATE: 04/06/2018

DATE: April 6, 2018

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In Re:)	
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-----)	ISCR Case No. 16-03500
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 5, 2017, 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). Department Counsel requested a hearing. On January 16, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Eric H. Borgstrom 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 a 51-year-old military retiree who is an employee of a defense contractor. After twice failing a security certification test in 2014, he altered another employee’s certification to reflect he passed the test and verbally represented to his supervisor that he passed the test. He forward the false certification to his employer who later discovered it was falsified. He was terminated from that job. He falsified the certification because he was concerned he would lose his job without it.

In a security clearance application in 2016, Applicant disclosed he lost a job because he did not have a security certification but omitted that he had falsified the certification. During a subsequent background interview, he stated that he was terminated from the job for failing the certification and that he has no other problems with his employment. Upon further questioning, he stated he passed the security certification test and denied any investigation into its falsification. During the interview, he later admitted he falsified the security certification and claimed he did not disclose the falsification earlier because he had forgotten the incident. At the hearing, he admitted he falsified the security certification and initially denied deliberately omitting or providing misleading information during the interview. “In his closing argument, Applicant admitted ‘misleading his employer and the investigator.’” Decision at 3, citing Hearing Exhibit IV.

Applicant’s coworkers have a high regard for his character and work performance. Those coworkers are aware of his false certification, but there is no record evidence that they are aware of his deliberate omissions during the background interview. He submitted a sworn statement of intent to abstain from making misrepresentations to his employer or Government representatives.

The Judge’s Analysis

Applicant’s falsification of the security certification and his deliberate false statements to his employer and the background investigator establish a pattern of dishonesty. He did not disclose the

falsification of the security certification until confronted. “At the hearing, [he] initially denied deliberately omitting relevant information during his [background] interview, but he later admitted he had not been forthright and candid to the investigator.” Decision at 5. He did not mitigate the security concerns arising from his falsifications and omissions. His lack of candor casts doubt on his current reliability, trustworthiness, and good judgment.

Discussion

Applicant argues that the Judge did not properly weigh and consider all relevant evidence. In making those arguments, he cites to such matters as the amount of time that has passed since the conduct in question, his character evidence, his excellent work performance, and his sworn statement of intent. We note the Judge made findings about those matters. Applicant’s arguments are neither sufficient to rebut the presumption that the Judge considered all of the record evidence 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. 17-00257 at 3 (App. Bd. Dec. 7, 2017). We give due consideration to the Hearing Office case that Applicant cited, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge’s decision. *Id.* Additionally, Applicant has failed to establish the Judge committed harmful error in the whole-person analysis.

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

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