

KEYWORD: Guideline E; Guideline J

DIGEST: Applicant contends the Judge erred in finding that she was arrested for the child cruelty charge in 2014. In support of this claim, she submitted a Detention Certificate that post-dates the Judge’s decision. This Detention Certificate constitutes new evidence that the Appeal Board cannot consider. We note that, in her security clearance application, Applicant disclosed that she “was arrested” for the 2014 incident, and a police record also reflects she was arrested on that occasion. The Judge’s finding that Applicant was arrested for the child cruelty charge in 2014 is supported by substantial evidence. Adverse decision affirmed.

CASENO: 17-00709.a1

DATE: 06/28/2018

DATE: June 28, 2018

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In Re:)	
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-----)	ISCR Case No. 17-00709
)	
Applicant for Security Clearance)	
)	

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 June 2, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On March 20, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Stephanie C. Hess 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 her findings of fact 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 is a 34-year-old employee of a defense contractor. In 2011, child protective services (CPS) took custody of Applicant’s two children after daycare workers observed a visible hand print on one child’s arm. The children were placed in foster care. The police questioned Applicant, and she was referred to CPS for counseling. Noncompliance with the counseling program could have resulted in loss of custody of the children. Applicant completed the required counseling.

In 2014, daycare providers contacted the police because they suspected one of Applicant’s children had been abused. An investigation led to Applicant being arrested and charged with felony child cruelty. She was arraigned and released from jail. Police reports reflected that Applicant grabbed one child by the neck, threw her to the floor, and punched her. Due to this incident, Applicant was separated from her children for about two months. She and her husband were required to attend child-abuse-perpetrator classes, which she completed. In early 2016, she checked on the status of her criminal case at the county courthouse and was given a document that stated, “no cases or charges found.” Decision at 3. She never received a notice that her case was dismissed and provided no documentation as to the status of the charge.

Applicant denies making a false statement during a background investigation. She told the investigator that she spanked her child three times the day before her arrest and denied ever having made a statement about punching her child. She also denied falsifying her security clearance application (SCA) in 2014 when she responded “No” to the question that asked if, in the past seven years, she consulted with a healthcare professional regarding an emotional or mental health condition. She claimed that she did not list the CPS-ordered counseling because she did not understand the question.

The Judge’s Analysis

In 2011, Applicant’s children were removed from the home due to her suspected child abuse. In 2014, she abused one of her children and was arrested and charged with felony child cruelty.

Applicant's denial of culpability for these alleged incidents casts doubt on her reliability, trustworthiness, and good judgment.

Applicant denies the falsification allegations, and the mere omission of information does not prove a falsification. Applicant's claim that she never described the 2014 incident as she is reported to have stated in two police reports is simply not plausible. The Judge concluded that she intentionally falsified her statement to the background investigator about that incident. The Judge found in favor of Applicant on two allegations that she falsified her SCA by failing to disclose mandated counseling because no evidence established that it was for an emotional or mental health condition.

Discussion

Applicant contends the Judge erred in finding that she was arrested for the child cruelty charge in 2014. In support of this claim, she submitted a Detention Certificate that post-dates the Judge's decision. This Detention Certificate constitutes new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29. We note that, in her security clearance application, Applicant disclosed that she "was arrested" for the 2014 incident, and a police record also reflects she was arrested on that occasion. Items 3 and 4 of the File of Relevant Material. The Judge's finding that Applicant was arrested for the child cruelty charge in 2014 is supported by substantial evidence, *i.e.*, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See, e.g.*, ISCR Case No. 16-04094 at 2 (App. Bd. Apr. 20, 2018).

Applicant also challenges the Judge's findings regarding the alleged SCA falsifications. She argues that she did not understand the question. However, we need not address that assignment of error because the Judge found in favor of Applicant on those allegations.

The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. For example, she contends that the Judge was mistaken about her not being remorseful. These arguments fail to establish that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR 17-00257 at 3 (App. Bd. Dec.7, 2017).

Applicant has failed to identify any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the 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: Charles C. Hale _____

Charles C. Hale
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy _____

James F. Duffy
Administrative Judge
Member, Appeal Board