KEYWORD: Guideline E; Guideline F

DIGEST: A favorable security clearance decision does not bar an adverse security clearance decision when an applicant has engaged in misconduct subsequent to the favorable security clearance decision. In this case, Applicant admitted to criminal conduct that occurred after his favorable security clearance adjudication. Adverse decision affirmed.

CASENO: 17-01755.a1

DATE: 08/13/2018

DATE: August 13, 2018

In Re:	)	
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	)	
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 August 8, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), 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 May 2, 2018, after considering the record, Administrative Judge Philip J. Katauskas 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 F are not at issue on appeal. Consistent with the following, we affirm.

The Judge's Pertinent Findings of Fact and Analysis

Applicant is 43 years old, has never been married, and has a minor son. He served in the military and was involuntarily separated for unacceptable conduct with a general discharge under honorable conditions. The SOR alleged that Applicant's was involved in 13 criminal incidents between 2008 and 2016. These include a "probation violation; simple battery; criminal trespass; narcotic possession; driving on a suspended or revoked license; altering a license plate; contempt of court . . . reckless conduct with a child; driving under the influence; operating a vehicle with an expired license; tampering; and theft of public utilities." Decision at 4. He denied the tampering and theft of public utilities allegation, but admitted the others.

In separate incidents in 2012, Applicant was also arrested for deprivation of a child and reckless conduct and for driving under the influence. Applicant presented documents showing that the narcotics possession and a related charge were dismissed and that he was no longer on probation. A Guideline E allegation asserted that Applicant received nonjudicial punishment in the military for fraternizing with enlisted females and conduct unbecoming an officer.

Applicant's admissions to 11 of the 13 Guideline J allegations established disqualifying conditions 31(a) and 31(b).[1] None of the mitigating conditions applied. His most recent probation ended in 2017. Insufficient time has passed since his latest arrest to conclude he has been rehabilitated.

Discussion

[1] Directive, Encl. 2, App. A ¶ 31(a) states, "a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;" and ¶ 31(b) states, "evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]"

In his appeal brief, Applicant contends that he was issued a security clearance in 2011 and it was not scheduled to expire until 2021. He argues the Judge did not consider that he was granted the earlier clearance. To the extent that he may be arguing that his security clearance eligibility cannot be reexamined, we do not find that argument persuasive. The Federal Government has a compelling interest in protecting and safeguarding classified information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). A favorable security clearance decision does not give an applicant a right to retain a security clearance or bar an adverse security clearance decision when an applicant has engaged in misconduct subsequent to the favorable security clearance decision. *See, e.g.*, ISCR Case No. 04-08806, at 4 (App. Bd. May 8, 2007). In this case, Applicant admitted to criminal conduct that occurred after his favorable security clearance adjudication.

Applicant also contends that the Judge "did not dig deeper into the facts and circumstances" in his police record and did not consider favorable background information on him. Appeal Brief at 1. His arguments, however, 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. 14-03747 at 3 (App. Bd. Nov. 13, 2015).

Applicant has not identified any harmful error in the Judge's 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*, *supra*, at 528. *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: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board

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