

KEYWORD: Guideline E; Guideline F; Guideline H

DIGEST: Applicant denied that he had deliberately misled the investigator. However, after considering the record as a whole, we conclude that the Judge’s finding of deliberate falsification is supported by “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.” Adverse decision affirmed.

CASENO: 17-01950.a1

DATE: 08/07/2018

DATE: August 7, 2018

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 17-01950
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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 July 17, 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 E (Personal Conduct), and Guideline H (Drug Involvement and Substance Misuse) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 19, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran 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’s findings contained errors and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guidelines F and H are not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Findings and Analysis

Applicant is an employee of the Defense contractor. He served in the military from 2000 until 2010. In 2001, while on active duty, he smoked marijuana on several occasions and used cocaine once. In 2009, he used an alternative to marijuana known as spice. He did so several times. Applicant also took Percocet twice without a prescription. Another service member provided the Percocet to him, and on the second occasion he snorted it. As a consequence of this misconduct, Applicant received nonjudicial punishment and was discharged prior to the completion of his term of service with a General Discharge Under Honorable Conditions.

When he was interviewed during his background investigation, Applicant told the investigator that his wife had given him one Percocet pill that he had taken to relieve back pain. He stated that he had never smoked spice and had never snorted Percocet. He claimed that the only time he had used Percocet it was given to him by his wife. At the hearing, he acknowledged that he had not told the investigator the truth.

The Judge stated that Applicant’s deliberate false statements to the investigator cast doubt upon his reliability, trustworthiness, and good judgment. None of the potentially applicable mitigating conditions apply.

Discussion

Applicant denied that he had deliberately misled the investigator. However, after considering the record as a whole, we conclude that the Judge’s finding of deliberate falsification is supported by “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 cites to evidence that he contends the Judge did not consider or that he mis-weighed. However, Applicant has not rebutted

the presumption that the Judge considered all of the evidence, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 16-01077 at 3 (App. Bd. Apr. 25, 2018). Applicant cites to the adverse impact that an unfavorable decision will have upon him. However, the Directive does not permit us to consider this matter. *See, e.g.*, ISCR Case No. 17-01492 at 2 (App. Bd. Apr. 30, 2018).

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