

KEYWORD: Guideline B; Guideline J; Guideline E

DIGEST: The Judge's conclusion that Applicant knowingly committed a falsification is a reasonable interpretation of the record evidence. Adverse decision affirmed.

CASENO: 04-09637.a1

DATE: 10/17/2007

DATE: October 17, 2007

In Re:)	
)	
-----)	ISCR Case No. 04-09637
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

J. Theodore Hammer, Esq., Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 16, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), 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 hearing. On June 7, 2007, after the hearing, Administrative Judge John Grattan Metz, Jr. denied Applicant's request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.¹

Applicant raises the following issue on appeal: whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: In November 1992 Applicant was arrested for trafficking drugs in the second degree and for possession of drugs, both felonies. Applicant had been driving a car rented by his employer at the time. The employer was also arrested while driving another car. The employer had been under surveillance for drug trafficking. The police uncovered illegal drugs in the employer's car. Applicant was not prosecuted for the offense.

Applicant's Security Clearance Application (SCA) asked him to disclose any felony charges or convictions (Question 21) and to disclose any drug charges or convictions (Question 24). Applicant answered each in the negative. He did not report the 1992 incident. Applicant contended at the hearing that he had mentioned the arrest to a fellow employee, who advised him not to report it since he hadn't been convicted. He also stated that he notified the agent who conducted his security clearance interview that he had been arrested but that the agent never questioned him about it. The Judge found Applicant's testimony not credible.

In arguing that the Judge's decision is in error, Applicant contends that he did not intentionally provide false answers to the questions listed above. We have reviewed the Judge's findings and the record as a whole, including the testimony of the interviewing agent. The Judge's conclusion that Applicant had knowingly falsified his SCA reflects a reasonable interpretation of the record evidence. *See 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 must draw a "rational connection between the facts found and the choices made.")

In light of the record evidence, the Judge's conclusion that Applicant had failed to meet his burden of persuasion on granting him a security clearance is sustainable. *See Directive* ¶ E3.1.15. (Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish any appropriate mitigating conditions); *Department of the Navy v. Egan*, 484 U.S. 581, 528 (1988). ("The general standard is that a clearance may be granted only when 'clearly consistent with the interests of national security.'")

¹The Judge's favorable decisions under Guideline B and Paragraph 2.a of Guideline J are not at issue in this appeal.

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Chairman, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board