

KEYWORD: Guideline G; Guideline E

DIGEST: Applicant deliberately provided false information to the government multiple times over the last decade. Adverse decision affirmed.

CASENO: 06-11803.a1

DATE: 06/25/2010

DATE: June 25, 2010

In Re:	)	
----	)	
Applicant for Public Trust Position	)	ADP Case No. 06-11803

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Defense Office of Hearings and Appeals (DOHA) proposed to deny or revoke access to automated information systems in ADP-I/II/III sensitivity positions for Applicant. On December 4, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline G (Alcohol Consumption), Guideline

E (Personal Conduct), and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested that his case be decided on the written record. On April 13, 2010, after the close of the record, Administrative Judge Carol G. Ricciardello denied Applicant's request for a trustworthiness determination. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision was arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's adverse trustworthiness determination.

The Judge made the following findings of fact: Applicant has consumed alcohol, at times to excess and to the point of intoxication, from about 1975 to at least 2004. Applicant has a history of nine alcohol-related arrests and convictions beginning in 1988 and continuing through 2001. Applicant did not provide any information addressing whether he presently abstains from consuming alcohol or if he continues to drink. He did not provide information as to what rehabilitative steps he has taken. Applicant completed a Public Trust Positions Questionnaire in 2002. In response to a question asking if he had been arrested for, charged with, or convicted of any offenses in the last seven years, he deliberately failed to disclose four offenses that fell within the scope of the question. In 2004, Applicant completed another Public Trust Positions Questionnaire. In response to the same question about arrests, charges and convictions, he deliberately failed to disclose three arrests that fell within the scope of the question. Applicant falsified a signed and sworn statement in 2005 in that he stated he quit using alcohol in October 2002 and deliberately failed to disclose that he continued to drink alcohol until at least 2004. In response to interrogatories sent to Applicant by DOHA in 2006, Applicant falsified material facts in that he stated he had stopped drinking alcohol in October 2002, when in fact he failed to disclose he continued to consume alcohol to at least 2004. Applicant's falsifications and omissions constitute a violation of federal law, Title 18 USC, Section 1001, and are felonies.

The Judge concluded: Although a significant period of time has passed since his last criminal alcohol-related incident, without additional independent evidence as to present consumption, she could not find that his alcohol use would not be a recurring problem or not have a detrimental effect on his reliability, trustworthiness, and good judgment. There was no evidence that Applicant acknowledges his issues with alcohol or has taken actions to overcome his problem. There was insufficient evidence to determine that Applicant's issues with alcohol were under control. No mitigating conditions applied. There was no evidence that Applicant made a prompt good-faith effort to correct his omissions or falsifications. No evidence was presented to conclude that his omissions, falsifications, and criminal actions occurred under unique circumstances that are unlikely to recur. Applicant's deliberate falsifications cast doubt on his current reliability, trustworthiness, and good judgment, and they were unmitigated.

Applicant asserts that his 2004 questionnaire required him to go back seven years when listing arrests, charges, and convictions, and thus would start with the year 1998. His assertion fails to explain how the Judge erred in finding that he had deliberately failed to list two arrests in 1998 and 1999. Applicant mentions that he completed alcohol rehabilitation. The Judge found that

Applicant stated that he attended a court-ordered drug and alcohol rehabilitation class sometime in the 2000 decade, but that he did not provide any additional information as to what rehabilitative steps he had taken. To the extent that Applicant is arguing that the Judge ignored or gave insufficient weight to his attendance at an alcohol rehabilitation class, he has not demonstrated error on the part of the Judge.

Additionally, Applicant indicates that he has never disclosed personal information that he comes into contact with in the course of his employment. While this is favorable information that the Judge was required to consider, it does not mandate a favorable trustworthiness determination.

**Order**

The Judge's unfavorable trustworthiness determination is AFFIRMED.

Signed: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board