

KEYWORD: Guideline D; Guideline J; Guideline G; Guideline E

DIGEST: Applicant has not rebutted the presumption that the Judge considered all of the evidence. Refusal to provide truthful answers to lawful questions by investigators will normally result in denial of a clearance. Adverse decision affirmed.

CASE NO: 14-00606.a1

DATE: 01/28/2015

DATE: January 28, 2015

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 March 11, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline D (Sexual Behavior), Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Department Counsel requested a hearing. On September 30, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert Robinson Gales 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 Guidelines D, J, and G are not at issue in this appeal. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

The Judge made the following findings pertinent to the issues raised on appeal: Applicant is an employee of a Defense contractor. He has been employed by the same contractor since mid-2013. He has previously worked for Defense contractors and has performed his duties overseas in support of U.S. military operations. He served in the U.S. military from 2003 to 2007 during which time he received non-judicial punishment for an offense involving alcohol. He was discharged from the military for misconduct, receiving a General Discharge under Honorable Conditions.

Applicant's security clearance application (SCA) asked, among other things, whether in the previous seven years Applicant had been arrested by any type of law enforcement official; had been charged, convicted, or sentenced regarding a crime in any court; had ever been convicted of an offense involving domestic violence; or had ever been charged with an offense involving alcohol or drugs. Applicant answered "no" to these questions. Applicant's answers were false, however, in light of evidence of his interactions with law enforcement and the judicial system. He was arrested and charged with the following offenses: simple assault/drunk and disorderly, while in the military (2006); assault, while in the military (2007); unlawful carrying of a weapon (2007); battery, an offense involving domestic violence (2013); and public intoxication (2013). These offenses were substantiated by Applicant's admissions to the SOR and by the evidence adduced at the hearing.

Applicant enjoys a good reputation for dependability and honesty. His colleagues state that he has a high level of commitment to the job, is willing to accept additional responsibility, and possesses the interpersonal skills necessary to handle conflict.

### **The Judge's Analysis**

The Judge noted that, in his SCA, Applicant had certified his answers as correct, including those at issue in this case. Additionally, Applicant admitted in his answer to the SOR the deliberate nature of his false statements. However, he testified at the hearing that he completed his SCA while overseas and did not have all of the necessary information. The Judge found this explanation to be "simplistic." Decision at 15. He concluded that Applicant had indeed deliberately falsified his SCA and that none of the Guideline E mitigating conditions applied. In the whole-person analysis, the Judge noted Applicant's favorable evidence, such as having moderated his alcohol consumption, his good employment record, and his genuine remorse. However, the Judge reiterated his analysis concerning Applicant's deliberate falsifications. He also noted another falsification that was not alleged. The Judge stated that he mentioned this matter "as another example of a course of conduct in which Applicant had omitted or concealed the truth." *Id.* at 16. The Judge stated that, after considering Applicant's conduct, he had "substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance" *Id.*

## Discussion

Applicant cites to his good security record while performing duty in hostile situations. This was evidence that the Judge was required to consider, along with all the other evidence in the record. The Judge made findings about Applicant's performance of duty, explicitly acknowledging that he had worked in trying situations. However, the Judge's overall adverse decision is supportable, in light of Applicant's admissions of having deliberately falsified his SCA. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-13626 at 3 (App. Bd. Nov. 7, 2013).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. "The following will normally result in an unfavorable clearance action . . . : refusal to provide full, frank and truthful answers to lawful questions . . . in connection with a personnel security or trustworthiness determination." Directive, Enclosure 2 ¶ 15. 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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information 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: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board