

KEYWORD: Guideline J

DIGEST: Applicant challenged the Judge’s finding that he engaged in theft. The Judge’s material findings are based upon substantial evidence or constitute reasonable inferences that could be drawn from the evidence. Adverse decision affirmed.

CASENO: 14-02154.a1

DATE: 04/25/2016

DATE: April 25, 2016

<p>In Re: _____</p> <p>Applicant for Security Clearance</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>ISCR Case No. 14-02154</p>
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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 June 10, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On February 9, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez 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 were based upon substantial evidence and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has a master's degree and has worked for a Federal contractor since 2002. He has held a clearance for 15 years and has previously been granted access to sensitive compartmented information. In 2013, Applicant and friends went to a strip club. Applicant was arrested for stealing the purse and cell phone belonging to a dancer. The dancer told the police that she saw Applicant walking away "suspiciously" from where she had left her belongings, after which she confronted him and removed the items from his pocket. Another worker corroborated the dancer's accusation.

Applicant was arrested on felony charges and entered a plea of no-contest. He was placed on three years probation, although the court granted him early termination. Applicant reported this to his facility security officer. Applicant contends that he is innocent and that he pled no-contest in order to keep his job and his clearance. He believes that the dancer was vindictive but did not provide any motive for her to have falsely accused him.

The Judge's Analysis

The Judge noted Applicant's claim of innocence. He stated that Applicant provided no corroborating evidence to substantiate this claim or to undercut the evidence provided by the Government, particularly a police report that includes statements by the victim and the witness. The Judge stated that Applicant suggested no motive for two employees to have fabricated charges against a paying customer. Regarding mitigation, the Judge found that Applicant's misconduct was recent and that at the time of the Decision Applicant had been off probation for only a little over a month. Though noting favorable evidence, such as Applicant's having properly reported this incident, the Judge stated that Applicant had failed to acknowledge his criminal conduct. He stated that the misconduct continues to raise concerns about the extent to which Applicant has shown rehabilitation.

Discussion

Applicant challenges the Judge's finding that he had stolen the items in question. He claims that the evidence shows that he had found the purse and phone and was attempting to locate the owner. The Judge's findings are based in large part on the contents of the law enforcement report. This report contains written statements by the victim and by the witness, which are clear and mutually consistent and which implicate Applicant in an act of theft. Neither his Answer to the SOR nor his interview summary mention an effort to return property left unattended.¹ Therefore, to the extent that Applicant's appeal brief contains new evidence, we cannot consider it. Directive ¶E3.1.29. Applicant

¹Compare Applicant's Appeal Brief with his clearance interview, included in the record as Item 6: "Security approached [Applicant] and told him he stole the dancer's purse. [Applicant] did no such thing and does not remember seeing a purse. It could have been someone else. The dancer told security that the purse was afterward located and nothing was taken."

challenges the Judge's use of the word "suspiciously" in describing how the victim characterized his behavior on the evening in question. He also contends that he did not state that the victim was vindictive. Rather, he argues that he was referring to another dancer at the club. We conclude that the challenged statements constitute reasonable characterizations of the law enforcement report and of Applicant's SOR Answer. The Judge's material findings are based upon substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

The Judge examined the relevant data 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, 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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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