

KEYWORD: Guideline E, Guideline D; Guideline J

DIGEST: The Judge found: In 2006, Applicant was removed from a project and his employment was terminated following an investigation by the Navy which determined that Applicant had committed Sexual Battery on a fellow employee. Applicant testified that he had lied about the incident to a Naval investigator, and executed a false statement because he was afraid that he would lose his job and his coworkers would think he was a homosexual. He did not admit to the incident until he was in the process of undergoing a polygraph examination. Adverse decision affirmed.

CASENO: 07-12896.a1

DATE: 06/25/2008

DATE: June 25, 2008

In Re:)
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-----) ISCR Case No. 07-12896
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)
Applicant for Security Clearance)
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)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 18, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct), Guideline D (Sexual Behavior) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 20, 2008, after the hearing, Administrative Judge Martin H. Mogul denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s failure to mitigate the Guideline E, D and J security concerns is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following sustainable findings: In 2006, Applicant was removed from an assigned project and his employment was terminated following an investigation by the U.S. Department of the Navy which determined that Applicant had committed Sexual Battery on a fellow employee. Applicant testified that he had lied about the incident to a Naval investigator, and executed a false statement to that effect, because he was afraid that he would lose his job and his coworkers would think he was a homosexual. He did not admit to the incident until he was in the process of undergoing a polygraph examination.

Applicant completed a Security Clearance Application (SCA) in September 2006. Question 22 of the application asked whether during the last seven years, Applicant had ever been terminated from a job, or lost his job under other than favorable circumstances. Applicant replied “No” to that question. Applicant later submitted a second version of the SCA, in which he corrected his answer to question 22, to show that he had lost his job under less than favorable conditions. However, he did not attempt to make that correction until after he had revealed the truth about the incident during the polygraph examination process. Decision at 2-3.

The Board has examined the Judge’s decision in light of the record as a whole and concludes that the Judge has drawn ‘a rational connection between the facts found’ under Guidelines E, D and J and his adverse decision. *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 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). Accordingly, the Judge’s adverse decision is not arbitrary, capricious, or contrary to law.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, 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