

KEYWORD: Guideline H; Guideline E Guideline J

DIGEST: The Judge found that Applicant deliberately omitted her most recent methamphetamine use from her security clearance application. Adverse decision affirmed.

CASENO: 08-02421.a1

DATE: 03/03/2010

DATE: March 3, 2010

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In Re: )	
)	
----- )	ISCR Case No. 08-02421
)	
)	
Applicant for Security Clearance )	
_____ )	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Samuel Bluck, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 29, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 10, 2009, after the hearing, Administrative Judge Richard A. Cefola 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 security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.<sup>1</sup>

The Judge made the following pertinent findings of fact: Applicant has a history of methamphetamine use, starting in about 1999. Her use increased until it became a daily habit in 2002 and 2003. She subsequently entered a drug rehabilitation facility, leaving it in January 2004. She participated in an aftercare program for two months thereafter, though she returned to methamphetamine use. In February 2006 Applicant was arrested for, *inter alia*, possession of methamphetamine. This charge was dismissed.<sup>2</sup>

In February 2007 Applicant completed her security clearance application (SCA). One question asked if Applicant had used any controlled substances within the previous 7 years. Applicant mentioned her methamphetamine use from 2001 until 2003. She omitted her subsequent use following her participation in the drug rehabilitation program. Applicant included the following comment in her answer: “I was using for a long time and didn’t stop until receiving help in a rehabilitation center[.]” Decision at 3; Government Exhibit 1, SCA dated February 2, 2007, at 38. The Judge concluded that this omission of her post-treatment methamphetamine use was deliberate.

In her brief, Applicant cites to previous decisions by the Appeal Board which she contends support her case on appeal. We conclude that these cases are distinguishable from Applicant’s and do not support a conclusion that the Judge’s decision is erroneous. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *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’s adverse 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).

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<sup>1</sup>The Judge made favorable findings for Applicant under paragraph 1 (Guideline H) and subparagraphs 2(a) and 3(c). Those findings are not at issue in this appeal.

<sup>2</sup>Applicant testified as to her understanding that the charges were dismissed due to an unlawful search and seizure. Tr. at 112.

**Order**

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael D. Hipple  
Michael D. Hipple  
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