

KEYWORD: Guideline G; Guideline H; Guideline J; Guideline F; Guideline E

DIGEST: Although he cleared Applicant under all but Guideline E, the Judge reasonably explained why the totality of evidence supported a finding that Applicant had deliberately omitted information from her security clearance application. Adverse decision affirmed.

CASENO: 08-04492.a1

DATE: 05/20/2010

DATE: May 20, 2010

In Re:)	
)	
-----)	ISCR Case No. 08-04492
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ronald C. Sykstus, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 27, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6

(Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 23, 2010, after the hearing, Administrative Judge Michael H. Leonard 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 mis-weighed the record evidence regarding his finding that Applicant falsified her response to a question on a 2007 security clearance application (SCA).¹ Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is an engineer working for a Defense contractor. She holds a bachelor's degree in electrical engineering. She previously worked as an engineering intern for another company.

In February 2004 Applicant was arrested and charged with unlawful possession of a controlled substance, crack cocaine. Police arrested her after discovering the cocaine in her car as she was parked to use the drug. At court the charge was deferred, conditioned upon Applicant's reporting to the judge once a month. She complied and the charge was eventually dismissed.

Applicant has also been arrested for two DWI offenses. The earlier, in May 2006, occurred when Applicant was arrested sitting in her car in the middle of an intersection. Her blood alcohol level was subsequently tested at .298 and at .20. She pled guilty, but the court deferred adjudication conditioned on Applicant's attending Alcoholics Anonymous for six months. She complied, and the court dismissed the charge.

The second incident occurred in August 2006. Applicant was arrested at a safety check point. However, the court dismissed the charge for lack of evidence because the arresting officer failed to appear.

In May 2007, Applicant completed a SCA which inquired if she had ever had any drug or alcohol related arrests, charges, or convictions. Applicant listed the August 2006 DUI arrest but omitted the May DUI as well as the arrest for crack cocaine.

In concluding that Applicant had deliberately falsified her SCA, the Judge considered her explanation that she misunderstood the question, believing it did not require her to report dismissed criminal charges. However, the Judge noted the clarity of the question at issue, which militates against misinterpretation. He also noted another apparent false statement, not alleged in the SOR, which he considered on the issue of Applicant's knowledge and intent. He concluded that

[t]he most likely explanation . . . is Applicant was trying to paint herself in a positive light, because she was concerned that her police record . . . might be a hindrance to obtaining a security clearance. Question 23(d) of the security clearance application required Applicant to provide a full, frank, and truthful answer about her police record and she failed to do so. And the record does not support a conclusion that her

¹The Judge's favorable findings under Guidelines G, H, J, and F are not at issue in this appeal.

failure was due to a misunderstanding of the question or an honest mistake or simple negligence. Decision at 11.

In her appeal brief, Applicant contends that the Judge did not properly weigh the evidence which she presented concerning her state of mind when answering the question at issue. She contends that the record clearly supports an honest mistake rather than deliberate falsehood. She relies on her answers to interrogatories. It should be noted that a Judge is presumed to have considered all of the record evidence. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009); ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). In this case, the Decision demonstrates that he did so, explicitly addressing Applicant's explanation for her omissions and the interrogatories. We conclude that the Judge reasonably explained why he found against Applicant on this issue. His finding of deliberate omissions is further buttressed by record evidence of the high quality of Applicant's academic work in a demanding curriculum. A person with Applicant's educational attainments and apparent intelligence would be less likely simply to have misunderstood the question. Applicant has not demonstrated that the Judge's weighing of the record evidence is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-21819 at 2 (App. Bd. Aug. 13, 2009); ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

Applicant seeks a time-limited security clearance with probationary restrictions which she is willing to abide by in exchange for a permanent clearance subsequent to the probationary period. It is well settled that the Board has no authority to grant a conditional or probationary clearance. *See, e.g.*, ISCR Case No. 08-04889 at 2 (App. Bd. Apr. 23, 2009); ISCR Case No. 06-22044 at 2 (App. Bd. Feb. 28, 2008); and ISCR Case No. 04-04302 at 5 (App. Bd. Jun. 30, 2005).

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).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. 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