

KEYWORD: Guideline E; Guideline B; Guideline C

DIGEST: Judge’s conclusion that Applicant deliberately omitted from his security clearance application information about his marriage is sustainable. Applicant failed to rebut the presumption that the Judge considered all of the record evidence. Adverse decision affirmed.

CASE NO: 09-07647.a1

DATE: 04/13/2011

DATE: April 13, 2011

In Re:)	
)	
-----)	ISCR Case No. 09-07647
)	
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

John F. Mardula, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 14, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct), Guideline B (Foreign Influence), Guideline C (Foreign Preference), and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On January 13, 2011, after the hearing, Administrative Judge Juan J. Rivera 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 conclusions under

Guideline E were arbitrary, capricious, or contrary to law and whether the Judge's whole-person analysis was erroneous. Consistent with the following discussion, we affirm the Judge's decision. The Judge's favorable findings under Guidelines B, C, and F are not at issue in this appeal.

The Judge made the following pertinent findings of fact: Applicant is a software engineer working for a Government contractor. He recently applied for a position as a linguist and seeks a clearance in order to qualify for that job.

Applicant was born and raised in Iraq, but he came to the U.S. in the early 1990s. He attended college in this country and became a naturalized citizen in the early 2000s. He met his wife while the two were growing up in Iraq. In the early 2000s, while Applicant was working for a U.S. contractor in that country, the two began dating and they married a year later. He took her to another Middle Eastern country to apply for her entry into the U.S. Applicant then returned to the U.S. to take a position with another contractor, leaving his wife in Iraq.

Applicant completed a security clearance application (SCA) in 2004, after his marriage. He answered "never married" to a question about his marital status, which was incorrect in light of his recent wedding. The Judge found that Applicant had not corroborated his claim to have attempted to correct the error. Applicant also failed to disclose delinquent student loans on this same SCA.

In 2008, while working for a U.S. contractor in Iraq, Applicant was involved in personality conflicts with other employees. He was fired due to creating a "hostile work environment." Decision at 5. After being informed of the termination, Applicant was instructed to report to "a company area" for outprocessing and to fly out of Iraq through company-made travel arrangements. *Id.* He departed the company base without permission and did not notify his supervisors. He stayed away for about 20 days with an Iraqi friend. He made his own travel arrangements for returning to the U.S. He failed to return his U.S. embassy badge and his DoD identification badge after he was terminated. He used these badges to travel outside of Iraq and to return to the U.S.

Applicant contends that the record did not support the Judge's conclusion that Applicant's omission of his marriage was deliberate. In evaluating whether the Government has presented substantial evidence regarding the deliberate nature of a false statement or an omission, the Judge must examine the statement or omission in light of the record as a whole. *See, e.g.,* ISCR Case No. 08-07998 at 2 (App. Bd. Aug. 12, 2009). In this case, we note the Judge's findings (1) that Applicant had not corroborated his claim to have corrected the omission and (2) that he had also omitted required information on another question of the SCA. We also find persuasive Department Counsel's argument in his reply brief that Applicant's having recently married an Iraqi citizen who, at the time he completed the SCA, lived in Iraq was a matter which he might have wished to keep from U.S. authorities. Considering the record as a whole, the Judge's conclusion about the deliberate nature of Applicant's omission is sustainable.

The SOR also alleged (1) that Applicant was fired from a previous employment for creating a hostile work environment and (2) that he did not follow company procedures when he was terminated from employment. Applicant argues that, in addressing these allegations, the Judge failed to consider all of the record evidence or that he mis-weighed the evidence. For example, he asserts that the Judge did not discuss whether Applicant was responsible for the hostile work

environment attributed to his organization. Applicant points to numerous laudatory comments contained in awards and commendations that he had received. He also asserts that the Judge failed to take into account Applicant's evidence that his employer did not treat him fairly in terminating him.

We note record evidence, however, which supports the Judge's adverse conclusions regarding Applicant's service to the employer. Government Exhibit (GE) 2, an e-mail communication from the Operations Manager of Applicant's employer, contains a description of Applicant's conduct:

Apparently [Applicant] is still causing the problems and disruption that people have mentioned before. [A and B] seem to like him, but when they're not around, the word is that he openly talks about calling the White House to tell what a terrible job [B] is doing, things like that. He got into an argument the other day with [C] . . . because he didn't get his computer fixed as quickly as [Applicant] wanted. Then he got into an argument over the same thing with [D]. He has been threatening to e-mail an Assistant Secretary of State to complain about the injustice of the issue.

Moreover, GE 3 contains a Memorandum concerning hostile work environment, dated October 31, 2008. This exhibit states that Applicant's "behavior had become erratic, and that he had made insensitive ethnic and religious comments." This document acknowledges that other employees may also have contributed to the morale problems in the organization. However, it describes Applicant's conduct as "irrational and unprofessional." It describes the work environment as "intolerable and getting worse."

We also note GE 4, E-mail, dated November 2, 2008, to the effect that, upon being fired, Applicant refused company travel arrangements and left the area with an active CAC, embassy badge, and passport. The e-mail stated that a representative of the employer was "looking for him, discretely to bring him in" but, if that failed, it would be necessary to notify the Embassy so that it could put out an "APB" on Applicant. GE 4 constitutes substantial evidence that, after being terminated, Applicant maintained U.S. identification documents and went missing in an area in which the U.S. was involved in military operations, and it raises serious security concerns. Considered in light of the Judge's findings of fact and the record as a whole, and taking into account the favorable evidence in the record, the Judge's adverse conclusions under Guideline E are supportable. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. *See, e.g.*, ISCR Case No. 09-01735 at 2 (App. Bd. Aug. 31, 2010). Neither has he demonstrated that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law.

Concerning the whole-person factors, the Judge considered evidence favorable to Applicant, such as his service to the U.S. under dangerous conditions, and he made favorable findings for three of the Guidelines alleged in the SOR. However, his adverse findings under Guideline E are sustainable based on the record that was before him. The Judge's whole person analysis complies with the requirements of Directive, Enclosure 2 ¶ 2(a), in that he considered the totality of Applicant's conduct in reaching his decision. *See* ISCR Case No. 08-02464 at 3 (App. Bd. Jul. 16, 2009).

The record supports a conclusion 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). *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.” (emphasis added)

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: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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