

KEYWORD: Guideline H; Guideline E

DIGEST: The Judge discussed Applicant's mitigating evidence and was not persuaded that it outweighed the deliberate falsifications. Adverse decision affirmed.

CASENO: 10-02982.a1

DATE: 01/06/2012

DATE: January 6, 2012

In Re:

Applicant for Security Clearance

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) ISCR Case No. 10-02982
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)
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

E. Patrick Hill, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 10, 2011, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 19, 2011, after the hearing, Administrative Judge Thomas M. Crean 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 erred in his application of the mitigating conditions and whether the Judge’s whole-person analysis was erroneous. The Judge’s favorable findings under Guideline H are not at issue in this appeal. Consistent with the following, we affirm the decision.

The Judge made the following pertinent findings of fact: Applicant is a 33-year-old systems and test engineer for a Defense contractor. He has a bachelor’s degree in engineering and has held a security clearance since 2004.

In 2009, Applicant was apprehended for possession of illegal drugs. The drug possession was discovered as a result of a lawful search of Applicant’s car as he was entering a military installation for work. The drug in question was Oxycontin, a narcotic pain reliever, which Applicant had been taking since the summer of 2008. Lacking a prescription, he was obtaining the drug illegally from a friend. He was entered into a pretrial diversion program, which he completed in late 2010. Applicant has weaned himself from Oxycontin and no longer associates with those who illegally use drugs.

When he completed his security clearance application (SCA) in late 2009, Applicant denied any illegal drug use. During a subsequent interview in 2010, Applicant falsely stated that the Oxycontin had belonged to his grandmother and that he had intended to dispose of it but forgot that it was in his possession. In response to DOHA interrogatories propounded to him later in 2010, Applicant admitted that the Oxycontin had been his. He acknowledged his drug use and his false answers, both on the SCA and to the interviewer.

Applicant enjoys an excellent reputation for trustworthiness, professionalism, and security worthiness. Applicant’s uncle testified that Applicant has shown substantial improvement in conduct since giving up the illegal use of drugs.

In the Analysis portion of the Decision, the Judge concluded that Applicant had mitigated the Guideline H security concerns. However, he concluded that Applicant’s false statements during the security clearance process were recent and significant. The Judge noted that Applicant had provided false information on two separate occasions, characterizing the misconduct as “a strong indication of his questionable judgment, lack of candor, dishonesty, and unwillingness to comply with rules and regulations.” Decision at 10.

In pressing his appeal, Applicant cites to record evidence of his successful effort to break his drug habit, which he argues was at the root of his falsifications. He also cites to his evidence of good character and of good job performance, contending that the evidence, viewed as a whole, is sufficient to mitigate the Guideline E security concerns raised in the SOR. The Judge explicitly noted Applicant's mitigating evidence, but he was not persuaded that this evidence outweighed Applicant's deliberate falsifications. Applicant's brief in essence argues for an alternative interpretation of the record evidence, which is not sufficient to demonstrate error. *See, e.g.*, ISCR Case No. 06-10859 at 4 (App. Bd. Sep. 2, 2010).

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,'" both as to the mitigating conditions and the whole-person factors. *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."

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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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