

KEYWORD: Guideline J; Guideline H; Guideline E

DIGEST: Applicant's argument that he omitted embarrassing information from his security clearance applications out of concern for his job does not demonstrate error. Specifically the Judge considered Applicant's explanation in concluding that the Applicant deliberately falsified his applications. Adverse decision affirmed.

CASENO: 10-05860.a1

DATE: 12/05/2012

DATE: December 5, 2012

In Re:

Applicant for Security Clearance

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) ISCR Case No. 10-05860
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)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 4, 2012, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct), Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicants requested a hearing. On September 17, 2012, after the hearing, Administrative Judge Henry Lazzaro denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse clearance decision is arbitrary, capricious or contrary to law.

Applicant argues that the Judge’s adverse decision should be reversed because the Judge erred in concluding that Applicant deliberately and intentionally provided false information on security clearance applications he submitted in June 2004 and January 2010. In support of that argument Applicant states that he omitted the information because he was concerned about losing his job and was very embarrassed about that happening. He also states that he did not understand how to fill out the applications and how important it was not to omit anything. Applicant’s arguments do not demonstrate that the Judge’s decision is arbitrary, capricious or contrary to law.

In reaching his decision as to Applicant’s falsifications, the Judge specifically considered Applicant’s explanations. Decision at 3, 4 and 7. However, he was not bound, as a matter of law, to accept or reject those explanations. Rather, the Judge considered those explanations in light of the record evidence as a whole, and concluded there was a sufficient basis to find that Applicant’s omissions were deliberate and intentional. On this record, the Judge’s finding that Applicant’s falsifications were deliberate is sustainable. *See* Directive ¶ E3.1.32.1.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to mitigate those concerns. Directive ¶ E3.1.15. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable, or *vice versa*. A party’s disagreement with the Judge’s weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 10-00278 at 2 (App. Bd. Mar. 18, 2011).

A review of the Judge’s decision indicates that he weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying circumstances and considered the possible application of relevant conditions and factors. He found in favor of Applicant under Guidelines J and H, but reasonably explained why the mitigating evidence was insufficient to overcome the government’s security concerns under Guideline E.

The Board does not review a case *de novo*. 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, 158 (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 unfavorable security clearance decision is sustainable.

Order

The Judge’s 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: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board