KEYWORD: Guideline E

DIGEST: The Board has no authority to grant a lower level clearance as an intermediate solution, if Applicant is ineligible for the sought after level of clearance. Adverse decision affirmed.

CASENO: 12-00740.a1

DATE: 08/18/2014

DATE: August 18, 2014

In Re:	)	
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Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 26, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that

decision–security concerns raised under Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On June 5, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Philip S. Howe 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 considered all of the evidence in the record. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant entered the U.S. military in 2005. He tested positive on a pre-induction urinalysis. He was permitted to enlist because other recruits tested positive as well. He had denied any prior use of controlled substances on his enlistment papers. He later received non-judicial punishment under Article 15, UCMJ, for communicating a threat to kill a Drill Sergeant. Applicant denied the offense. During his clearance interview he was vague about the circumstances underlying the Article 15, attributing his remarks to sarcasm.

Applicant was disciplined and/or terminated from employment from several civilian employers. Two of his job terminations, from the same employer, resulted from his having followed a shoplifter into the parking lot without calling for support, as company policy required him to do.[1] Another employer administered verbal and written warnings to Applicant for speed alerts, attendance issues, "displaying an attitude," not following instructions, and not clocking out on time. Decision at 2. During his interview, he initially denied having issues with this employer. When confronted with the adverse information, he claimed that he had been told by someone at the company that the incidents would not be placed in his file.

He had disciplinary problems with another employer that provided security services. While performing his rounds, he failed to report burglars in a store, believing them simply to be rearranging inventory. He was also counseled for poor attendance.

During his interview he failed to disclose all of his disciplinary problems. He also stated to the investigator and to the clearance adjudicator that he was making statements that he thought they wanted to hear. He also told the investigator that he would tell his employers whatever he thought they might want to hear, whether he meant the statements or not. In completing his SCA, he failed to disclose disciplinary action by two of his employers.

The Judge's Analysis

[1]Applicant's security clearance application (SCA), Item 4, shows that he frequently worked as a security guard or in some other related job.

The Judge concluded that Applicant's conduct was neither minor nor infrequent. Moreover, he stated that Applicant had made no efforts to correct his omissions and false statements. The Judge characterized Applicant's behavior as a pattern, finding that he had taken no steps to reduce his vulnerability to coercion. The Judge concluded that Applicant's conduct raised serious, unresolved questions as to his fitness for a clearance.

Discussion

Applicant cites to his having held a clearance for several years in the Reserves without a security incident. While this is evidence that the Judge was required to consider, along with all of the other evidence in the record, Applicant's argument is not sufficient to rebut the presumption that the Judge considered all of the evidence. *See, e.g.*, ISCR Case No. 11-06649 at 3 (App. Bd. Feb. 21, 2014). Applicant states his belief that the requirements for a secret clearance are different from those of a top secret and requests us to approve a secret clearance for him if he fails "to reach the standard of a TS[.]" Appeal Brief at 1. We have no authority to grant this relief. "DOHA decisions must either grant or deny a clearance . . . we have no authority to compromise and grant a lower level clearance as an intermediate solution." ISCR Case No. 99-0260 at 4 (App. Bd. Apr. 12, 2000).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The 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 Decision is **AFFIRMED**.

Signed; Michael Ra'anan
Michael 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